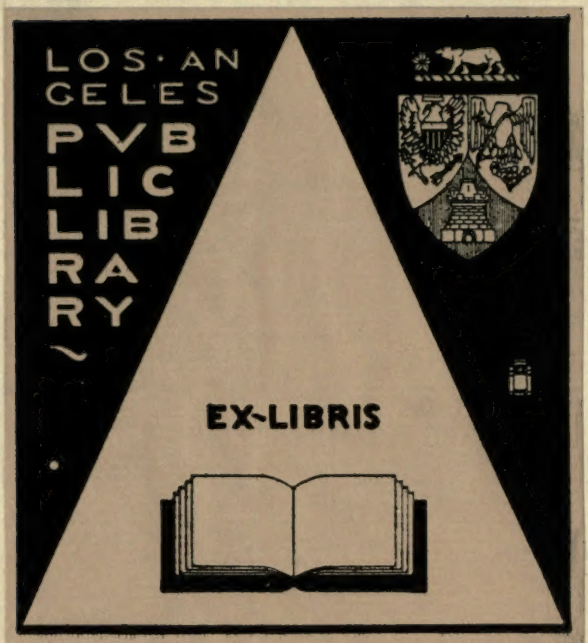

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STATE OF NEW YORK

MESSAGES FROM THE GOVERNORS

COMPRISING

Executive Communications to the Legislature and Other Papers Relating to Legislation from the Organization of the First Colonial Assembly in 1683 to and Including the Year 1906

WITH NOTES

EDITED BY CHARLES Z. LINCOLN

PUBLISHED BY AUTHORITY OF THE STATE

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VOLUME III

1823-1842

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PREFACE.

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This volume covers the administrations of Governors Yates, DeWitt Clinton, Van Buren, Throop, Marcy and Seward, and of Lieutenant-Governor Pitcher, who became Acting-Governor on the death of Governor DeWitt Clinton in February, 1828. Lieutenant-Governor Throop became Acting-Governor on the resignation of Governor Van Buren in March, 1829. He served out the remainder of that term, and in 1830 was elected for a full term, beginning January 1, 1831.

The volume opens with the second Constitution which went into operation on the 31st of December, 1822. It includes history relating to the completion of the original canals and the inauguration of a general policy of canal construction and internal improvements. Important changes in the State's financial system, especially in its banking laws, are noted in this volume, and also the serious agitation relative to slavery, which did not subside until the abolition of that institution during the Civil War. The volume also includes communications and notes relative to anti-rent troubles, which culminated in serious riots disturbing the peace of the community and requiring energetic action by the Governor. These disturbances were renewed with still greater violence under subsequent administrations, and became a subject of important statutory and constitutional changes as noted in the next volume. This volume also includes notes on the method of choosing presidential electors, federal tonnage on canals, Lafayette's visit, taxation, canal development, Williams extradition case, northeastern boundary controversy, and various other matters relating to current history.

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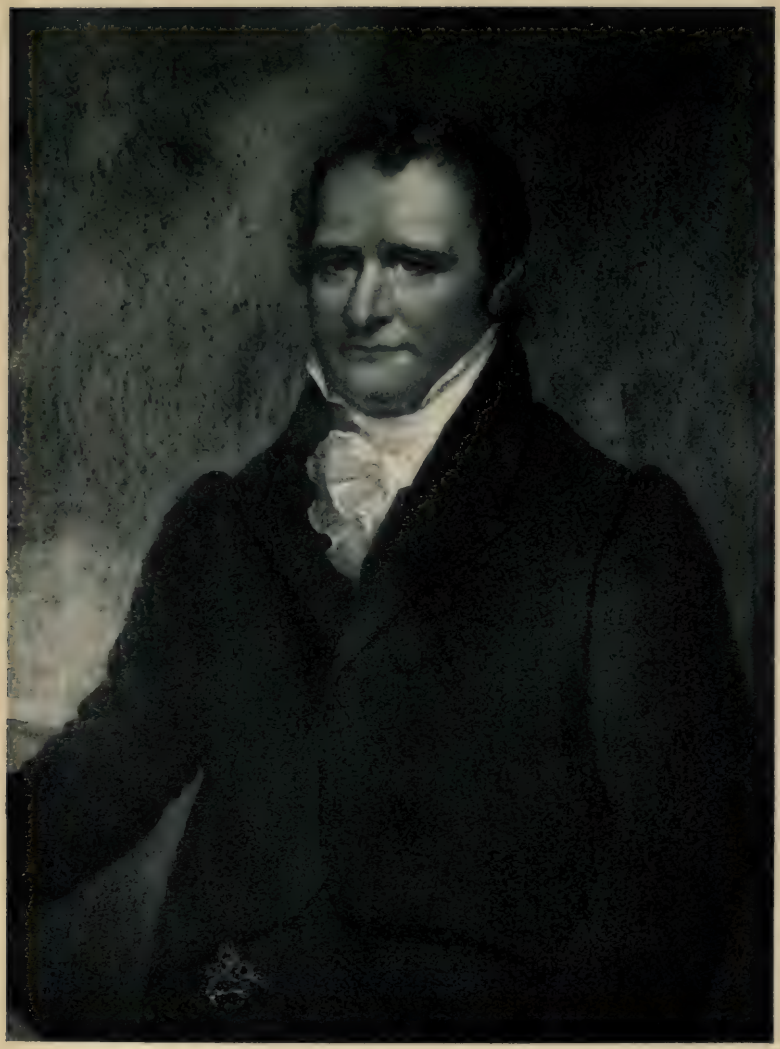

Joseph C. Yates

MESSAGES FROM THE GOVERNOR.

1823. JANUARY. LEGISLATURE, FORTY-SIXTH SESSION.

JOSEPH C. YATES, Governor.

The Second Constitution, which had been prepared by the Convention of 1821, was approved in January, 1822, and took effect on the last day of December in the same year. By this constitution, the Governor, Lieutenant-Governor and members of the Legislature were to be chosen at a general election beginning on the first Monday in November, 1822, and their terms of office were to begin the first day of January, 1823. Under the new constitution the Governor and Lieutenant-Governor were to hold office two years, members of assembly one year, and senators four years.

At the election in November, 1822, Joseph C. Yates, who had served fourteen years as justice of the Supreme Court, was elected Governor, and Erastus Root, who had already served several terms in both branches of the legislature, and had been a member of the Constitutional Convention of 1821, was elected Lieutenant-Governor.

By the new Constitution communications from the Governor to the Legislature were to be made by message, discontinuing the custom which had prevailed in the colonial period and under the first Constitution by which the Governor at the opening of a session usually delivered a speech in the presence of both houses.

The pardoning power was vested in the Governor alone, except in cases of treason and impeachment.

The Council of Revision was abolished by the second Constitution, and the veto power was vested exclusively in the Governor, but the Legislature, as before, might overrule a veto by a two-thirds vote. From this time forward, therefore, the journals contain veto messages from the Governor alone.

The Council of Appointment was also abolished, and the power of confirmation of nominations to office was vested in the State senate, and the Governor was given the exclusive right of nomination.

At different times during our legislative history, but not regularly, the Governor has sent messages to the legislature announcing his approval of certain bills. The volumes of session laws contain the bills thus approved, and unless messages announcing the approval of bills include other matter, they will for obvious reasons be omitted in this record.

The first Legislature under the second Constitution met at Albany on the first day of January, 1823, but a quorum did not appear until the 7th, at which time the Governor transmitted to both houses the following

ANNUAL MESSAGE:

GENTLEMEN OF THE SENATE AND OF THE ASSEMBLY.— The situation in which we are at present placed, is peculiarly interesting, and highly responsible; and while addressing the first legislature convened under our new constitution, from a situation to which, by the favorable opinion of my fellow citizens, I have been elected, and in obedience to the commands of that constitution, presenting and recommending for their consideration, some of the various subjects which will necessarily claim their attention, during this, their first session, I feel sensibly, such peculiar interest and high responsibility.

In the performance of the duties of my station, I am satisfied, that I shall receive every requisite aid and sup-

port from your united exertions for the public good; and while we have this object only in view, whatever difference of opinion shall exist, relative to the adoption of means to promote the welfare of the people, by whom we have been selected as agents, and intrusted with power, I feel confident expectation, that the judgment of charity will be extended towards each other, for the motives by which we are governed; and I claim the kind indulgence of my fellow-citizens, for the errors which I shall unintentionally commit; and while society must be governed by the limited capacity of human beings, subject to the conflicting temporal interests and frailties of human nature, errors will unavoidably occur, and even correct measures and conduct be pronounced erroneous.

Resting in the consciousness of a correctness of my motives, and relying on the support of a superintending Providence, I shall endeavor, to the utmost of my ability, to promote the welfare of the people, and the best interests of the state.

There has been only one period since the Declaration of our independence, that the legislature of the state of New York have been called upon to perform such high and responsible duties as at this session will devolve upon you; and when we reflect upon the conduct of those who formed the first constitution of this state, and organized a government, every well ordered mind must be led with gratitude to bow before the throne of Grace, returning fervent thanks to the God of heaven and of earth, who raised up for us, in that time of need, men eminently endowed with great intelligence, integrity, and superior, I had almost said inspired, views of the rights and liberties of man. The checks and balances of the old constitution of this state were admirable, when judged with reference to the time in which it was adopted; just emerging from a state of colonial dependence, and while desperately, and almost convulsively, struggling to break the fetters of trans-atlantic despotism;

almost every man in the community, at that time, possessing high ideas of the necessity of a strong executive power, and great legislative independence; and although we have amended what we have deemed its errors, and what, in the present state of the community, were really such, yet the candid mind cannot but admire and applaud its great comparative excellence. I could not, gentlemen, withhold at this time, and on this occasion, the expression of my affection and veneration for those men, great in intellect and honesty, several of whom were personally known to many of us, who, having placed and seen their country in prosperity and the enjoyment of liberty, have gone to sleep with their fathers, until the great day of retribution.

This government has, by the late amendments, been adapted to the present feelings and views of the community, the only proper standard by which a good government can be formed; and no time for its re-organization could be more auspicious than the present. The peaceful state of the country, and absence of any asperity in party contentions, will enable you to obtain the benefit of each others' candid views of every measure; and although it is obvious that in the enactment of laws, in compliance with the new provisions of the constitution and the re-organization of the government, many unexpected difficulties and embarrassments must unavoidably occur, yet by mutual forbearance, when you may differ in opinion, and by great attention and circumspection in the adoption of measures, these will vanish.

To you, as the first legislature assembled for the purpose of reorganizing this government, clothed with plenary powers to apply the provisions of that constitution, and limited only by its articles, the people look for wisdom, prudence and self government, and I do not hesitate to indulge a confident expectation, that their hopes will not be disappointed.

The principal portion of your time and attention will probably be devoted to passing such laws as have become necessary, under the existing constitution. I have, therefore, thought it proper to confine myself to such prominent subjects of legislation as will probably, under such circumstances, be presented for your consideration.

Among the various and highly interesting subjects claiming your attention, the most important is the arrangement and organization of the judiciary.[1] It is one that ought to be approached with great caution, but with full and competent decision. It must be acted upon with firmness, yet with the greatest discretion; its responsibility to the community fully retained, and its independence amply secured; so that no executive, legislative, or other influence can be brought to bear upon it in such a manner as to have a deleterious effect upon its deliberations or decisions; the division of its labors so made, that it is within the reasonable limit of human power to attend to its duties; that the execution of the laws may be enforced; justice extended to all and denied to none; its pecuniary support provided for, with such liberality that the most intelligent and best men may not feel as if they are doing themselves and their families injustice, by accepting the most responsible and highest public stations in the gift of the government. The supreme court, now to be composed of three judges, is to receive its most considerable aid in the discharge of certain of its duties, by the establishment and appointment of circuit judges, pursuant to such division of the state into judicial

[1] A general judiciary act, chapter 182, was passed April 17. It appointed terms of the supreme court, provided for process, the appointment of a reporter, divided the state into eight circuits corresponding to the senate districts, vested circuit judges with chancery jurisdiction, defined the powers of the oyer and terminer, and contained numerous provisions as to procedure.

Chapter 47, passed February 24, defined the powers and jurisdiction of the court of common pleas and general sessions of the peace in each county except New York.

Chapter 269, passed April 24, contained provisions fixing the compensation of the chancellor, judges of the supreme court, circuit judges and others.

districts, as you may deem it advisable to make, and upon whom that important branch of our jurisprudence, the holding of courts of oyer and terminer, and nisi prius, will principally rest. Those judges may also, at the will of the legislature, be considered and made assistants to the chancellor. The powers given to them, and the duties they are required to perform, as specially stated in the constitution,[a] with such as may be assigned to them by law, are of a character deeply interesting to the welfare of the state.

It will become your province to divide the state into districts, according to the fifth section of the fifth article of the constitution, and to invest them with such additional powers as you may deem proper, and may fall within the range of legislation.

An able, faithful, and impartial judiciary is not only the greatest ornament of the state, but the best security against tyranny and oppression. On its intelligence, firmness, and integrity, the lives, the property and liberties of the people in a great measure depend. This state has never failed duly to appreciate its importance as blended with its prosperity and honor; and while we are careful not to indulge in large and extravagant compensations to our public officers, it will not be denied that the independence of our judges is promoted in no small degree, by the permanency and adequacy of their salaries; thus enabling them on the one hand to devote their whole time and attention to the discharge of their judicial duties, and on the other, to be above the reach of any temptations to neglect them. This consideration derives additional force from that part of the constitution[b] which disqualifies them from accepting or being candidates, for any other office from the legislature or the people, during their continuance in their judicial stations. While on this subject, permit me also to remark, that legislative provision appears to be necessary with re-

[a] Const. 1821, art. 5, § 5.

[b] Const. 1821, art. 5, § 7.

gard to the powers vested in the court of probates by the old constitution, and with regard to the manner of vesting them under the new, and of regulating appeals therefrom. Whether such regulations will render provisions concerning the office of surrogate necessary, must be submitted to your wisdom and discretion.[2]

It will be requisite to declare by law, the time and manner of electing militia officers, and of certifying their election to the executive.

The attention of the legislature has frequently been called to the important and interesting subject of regulating the militia; it has become more interesting because of the variety of opinions which always have and still do exist in relation to the necessity of attention to it. But I have always entertained the opinion, that it is not possible to maintain a government perfectly free, without a reliance on a militia, for defence against insurrections and sudden incursions, and for volunteer aid in the formation of armies, when we may be afflicted with war; and in order to accomplish these objects, unremitted attention ought always to be paid to the organization and discipline of the militia. I therefore recommend a full examination of our militia laws, to your consideration.[3]

There are, at present, a very considerable number of officers for whose appointment no constitutional provision exists, other than a general power delegated to the legislature, to regulate the manner of making such appointments, and to limit their duration. Among these are the office of surrogate, auctioneer, commissioner to take acknowledge-

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[2] Chapter 70, passed March 21, abolished the court of probates, and transferred its powers and jurisdiction to the surrogate in each county. The same act made provision for the appointment of justices of the peace and special justices in the city of Albany, and justices of the marine court of the city of New York.

[3] A general militia act, chapter 244, was passed April 23. It contained numerous and detailed regulations for the organization and government of the militia, and was based on the federal statute of 1792.

ments of deeds, justices in cities, and some others, not deemed necessary here to enumerate, but which will, doubtless, in the discharge of the duties imposed upon you by the constitution, receive their proper share of your labors and attention.

That part of the constitution[c] which declares that the proceeds of all the public lands, with certain exceptions, belong to the school fund, and shall remain perpetually and exclusively appropriated to the support of common schools throughout the state, requires attention. The tracts thus set apart for that purpose, contain nearly one million of acres; most of these lands, however, remaining unproductive at this time, I submit to the legislature, whether the wise and patriotic intentions of the framers of our constitution, will be best promoted, by allowing them to remain in their present state, or to direct a sale of the whole, or a part, equal to a principal rendering an interest sufficient to make good the annual deficiency in the present school revenues. The subject of education is interesting to the happiness of every government and people, but more especially to a republic, having for its basis and permanency the intelligence and virtue of the people. To recommend it to your anxious care, is, I have not the least doubt, anticipating your intentions.[4]

During the recent elections under the new constitution, difficulties have arisen at some of the polls with regard to the true construction to be given to the article which defines the right of suffrage.

The intention of the makers of the constitution ought to be realized, and it is with you, as far as may fall within

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[c] Const. 1821, art. 7, § 10.

[4] Chapter 56, passed March 8, provided for a sale of the public lands, which had recently been purchased by the Attorney General, for the state, the proceeds to become a part of the school fund.

Chapter 193, passed April 19, contained regulations concerning the administration of common schools.

the scope of your constitutional powers, to pass explanatory laws, enabling the inspectors correctly to ascertain the citizens entitled to vote, and thus prevent improper exclusions by hasty and unadvised decisions during the election.[d]

The right of suffrage is of the highest value to the citizen, as all our civil institutions, and the purity and correct administration of our laws, in a great measure depend upon its legitimate or constitutional exercise; any forced construction, therefore, whereby this right might be unjustly refused or usurped, ought to be guarded against by the enactment of laws conformably to the spirit and intention of the constitution.[5]

The criminal code which has so frequently attracted the attention of the legislature, may still be considered in many respects susceptible of important improvements.

During the last autumn, whilst engaged in my official duties, as one of the justices of the supreme court, I visited the prison at Auburn, and from the representation of the inspectors of that prison, connected with actual observation, I am perfectly persuaded, that experience, there authorized by a late statute, has fully demonstrated that solitary confinement without labor, and where the prisoner is restricted in his diet, limiting such imprisonment in its duration, according to the nature of the offence, presents the best means of reclaiming the offender; and according to the benign intentions of our penitentiary system, of fitting him for future usefulness, in case he should thereafter be restored to society. I recommend this highly interesting subject to your serious and mature deliberation, in the hope that you will come to such results as will effectually insure

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[d] Const. 1821, art. 2, § 3.

[5] By chapter 268, passed April 24, tenants paying taxes were to be considered voters.

the important object, intended by the introduction of this humane and valuable principle into our criminal code.[6]

It gives me much pleasure to state, that the canal system, so wisely adopted and successfully pursued in the state, promises to realize the expectations of the community. The convenience already afforded to the inhabitants, by the facility with which the products of the country may be brought to market, has exceeded the most sanguine hopes of its warmest supporters.[7]

From a general view of the state of the treasury, it appears that the receipts during the year ending the 30th of November, 1822, were $915,705.39, which, together with the sum remaining in the treasury on that day, amount to $1,032,919.42. The payments during the same period, were $924,094.89, leaving a balance in the treasury of $108,824.53, of which, however, only $27,453.66, can be applied to the ordinary expenses of government; the residue being appropriated for specific purposes. The public debt on the 1st of December, 1822, amounted to $5,423,500, of which $4,243,500 are for monies borrowed to complete the canal. Several specific sources of revenue, such as the duties on salt, sales at auction, the commutation for the tax on steamboat passengers, and the canal tolls, are appropriated to the extinguishment of the canal loans and the interest

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[6] Chapter 160, passed April 15, contained provisions relative to prison administration, among other things imposing solitary confinement not exceeding two years in case of conviction for a second offence, and it also directed the construction of a tread or stepping mill in or near the jail in Albany.

[7] Chapter 96, passed March 29, provided for an additional loan of $1,300,000 for general canal purposes.

Chapter 218, passed April 22, provided for the location of the Erie canal through the village of Rome.

Chapter 111, passed April 5, provided for the construction of a basin in the city of Albany at the termination of the Erie and Champlain canals.

The last act (1823, Chap. 111) was sustained in Lansing v. Smith (1828), 8 Cow. 146; aff'd (1829), 4 Wend. 9. Section 12, requiring the city's consent to the law, was held unconstitutional in Corning v. Greene (1856), 23 Barb. 33.

thereof. It has not, as yet, been found necessary to resort to any other sources of revenue to meet the payment of the interest; the principal being irredeemable, by the terms of the loan, for several years.

The difficulties existing between this state and the state of New Jersey, concerning our territorial and jurisdictional limits, still remain unadjusted; and it is very desirable that measures should be adopted to terminate a controversy between two sister states, which, in so great a degree, interrupts the harmony and intercourse that ought to exist between them. Whether the aid of the congress of the United States should be required in this delicate affair, or whether it is not more discreet and proper that a further attempt should be made at negotiation or compromise, in the appointment of commissioners, are subjects affecting the character and interest of the state, and must be submitted to your wisdom and discretion.

Before I conclude this communication, I submit to you the propriety of directing a revision of all the public statutes of the state. The adoption of the new constitution has rendered many of our statutes inapplicable to the existing state of things; and many others, particularly in our penal code, are distributed into so many volumes, though relating to the same subject, that references to the different laws are rendered extremely difficult. In a new revision, those difficulties might be removed by condensing into one statute, each subject of legislation, and arranging them under proper heads, so that the people at large might clearly comprehend them; besides, much might be gained by omitting several obsolete statutes now appearing in our statute book. Various other improvements might be suggested, but they will readily occur to the legislature, should the subject receive a discussion.[8] Whatever other matters

[8] The Senate gave the matter of statutory revision some consideration, and a bill was introduced for the publication of the statutes, but it was not passed. The subject was renewed by the Governor in his message of 1824, and an act was then passed, chap. 336, creating a commission to revise and publish the statutes.

are necessary to be submitted, will be communicated by special message.

Notwithstanding the commercial metropolis of this state has, during the summer, been visited by one of those afflicting dispensations of divine Providence, which not unfrequently prove the scourge of a dense population, yet we have reason to be thankful that the pestilence has been stayed, and health and business resumed their wonted influence in that city.[9]

By a report or communication of the mayor of the city of New York, to the common council, made on the 25th of November last, and by that officer recently transmitted to me, it is proposed to erect a public hospital for fever patients, at a convenient distance from the city, to prevent the spread of the disease; and to which it is confidently expected, persons will, without reluctance, suffer themselves to be removed, as the situation would be more healthy, and afford them pure air, good nurses, and the best medical advice and attendance. While an establishment of this sort would be of the greatest advantage to the metropolis, it would have the additional recommendation, that its doors would necessarily be opened to receive non-resident patients who might unfortunately take the infection while in the city; and it being manifest that such a measure must essentially contribute to alleviate the distresses of a portion of our fellow creatures, if not prevent the ruinous consequences of the disorder to the city and country altogether, and thus in a precautionary as well as philanthropic point of view, promote the welfare and prosperity of both; their interests in that respect being mutual, it is submitted to your consideration whether some legislative assistance ought not to be afforded to encourage so humane and useful an undertaking.[10]

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[9] An act "to provide against infectious and pestilential diseases," chapter 71, was passed on the 21st of March, 1823.

[10] By chapter 82, passed March 24, provision was made for the erection of a fever hospital in New York, in accordance with the Governor's suggestion.

I congratulate you also, fellow-citizens, upon the prosperous condition of our country. We have maintained peace with all nations; our foreign relations have continued undisturbed, and the high reputation of our national government is still the theme of every patriot, and the admiration of the world.

The prosperity of our own state, in its agricultural, manufacturing, and commercial relations, and the many other blessings which by divine Providence we are permitted to enjoy, call for our most sincere aspirations of gratitude and praise; and while I shall earnestly pray for their continuance, I pledge myself to unite with you in every measure to preserve the honor, secure the rights, and perpetuate the freedom and happiness of our beloved country.

JOSEPH C. YATES.

Albany, January 7, 1823.

SPECIAL MESSAGES.

January 25. To the Assembly: Transmitting a copy of a treaty with the Stockbridge Indians, for the purchase of a tract of land, and also a letter from the surveyor general, accompanying the same.[11]

January 25. To the Assembly: Transmitting the annual report of the Commissary General.

January 27. To the Assembly: Transmitting resolutions adopted by the Massachusetts and South Carolina legislatures, disapproving the Pennsylvania proposition for an amendment limiting the power of Congress as to banks.[12] Also a report and resolutions adopted by the Legislature of North Carolina approving the Maryland

[11] Chapter 60, passed March 12, directed the sale of lands purchased of the Onondaga Indians at a treaty held February 11, 1822, and also lands purchased from the Stockbridge Indians by treaties held February 3, and August 28, 1822, and March 25, 1820.

[12] A concurrent resolution was adopted disapproving the Pennsylvania proposition as to banks.

plan for a distribution of public lands for educational purposes.

February 18. To the Assembly: Transmitting a resolution adopted by the legislature of Georgia, disapproving the Pennsylvania proposition to limit the power of Congress as to banks. [See note 12.]

February 20. To the Assembly: Transmitting the annual inspection return of the militia received from the Adjutant General.

March 3. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

March 4. To the Assembly: Transmitting the return of the inspector of flour and meal in the counties of New York and Kings.

March 8. To the Senate:

"By a resolution of the 8th of January last, I was requested to communicate to the Senate, such information as I might have, relative to the settlement of the accounts of this state, (by the agent of this state,) with the United States; and what prospect there is, that the said accounts will be speedily brought to a close.

Pursuant to the above resolution, I have the honor to state: that the letter from the late comptroller, of the same date with the resolution marked 1; with the other documents herewith transmitted, will in some measure show the situation of the accounts, and the progress made in the adjustment with the United States.

In expectation that the agent who conducted the business on the part of the state, would have been in this city to give further information, and afford such explanations as might be deemed necessary, I was induced to defer this message until his arrival. But the period, as stated by him, when he expected to be here, having elapsed, I have thought proper at this time, to make the communication

requested, which contains all the information on the subject in my possession.[13]

JOSEPH C. YATES."

Albany, March 7th, 1823.

The Comptroller stated that the State's claim against the United States amounted to $316,349.41; on which the State had received $114,561.36, leaving a balance of $201,788.05. In addition to this balance it was estimated that the further sum of $131,250, was due on account of expenses incurred by Governor Tompkins, making a total balance against the government of $333,038.05.

April 24. To the Senate:

Veto of a bill entitled "an act for the relief of Nathan Underwood, and other settlers and occupants on Lot Number 64 in Freemason's patent."

"Because the bill appropriates public property for private purposes, in remitting the interest due on mortgages against Nathan Underwood, and others, settlers and occupants on lot No. 64, in Freemason's patent, being contrary to the 9th section, of the 7th article, of the constitution of this state, requiring the assent of two-thirds of the members elected to each branch of the legislature; which bill was passed without the assent of two-thirds as above stated."

The bill was not passed over the veto.

April 24. The Legislature adjourned without day.

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[13] By chapter 267, passed April 24, the comptroller and treasurer were required to audit the accounts of the agent appointed to settle the claims of the state against the United States.

1824. JANUARY. LEGISLATURE, FORTY-SEVENTH SESSION.

JOSEPH C. YATES, Governor.

The Legislature met on the 6th of January. On that day the Governor transmitted to both houses the following

ANNUAL MESSAGE:

GENTLEMEN OF THE SENATE AND OF THE ASSEMBLY.—After a period of the most anxious solicitude, whilst performing the arduous and highly responsible duties of your first chief magistrate, in organizing the government under the existing constitution, it affords me inexpressible consolation to state, that through the favorable dispensations of a superintending Providence, the authorities constituted under it, are in full and successful operation.

The court of chancery, and the supreme court, two of the most important state tribunals, have been held since the last session of the legislature, at the usual periods; and I have reason to believe in a manner satisfactory to the public. Circuit courts, together with courts of oyer and terminer, have also been held in every county throughout the different districts. The industry and ability manifested by the gentlemen who presided on those occasions, have given general satisfaction; and experience has already evinced the utility, as well as necessity, of those courts, and has created a confidence, that the system as now established and conducted, will secure to the citizens a prompt and correct administration of civil and criminal justice; an object of vital importance to the preservation of the liberties and the security of the property of a republican community. To prevent inconvenience and embarrassment in conducting criminal prosecutions, in the unavoidable absence of the public prosecutor, by sickness, or other sufficient cause, which in so extensive a territory, composed

of a great number of counties, must frequently occur; the courts of oyer and terminer have, on several occasions, been obliged to appoint persons to attend to the business on the part of the people, without provision by law to remunerate them for their services. Permit me, therefore, to suggest the propriety of authorizing the court, in the absence of the district attorney, to appoint a substitute; and on trials involving the life of the prisoner, an assistant, if deemed necessary; whose services in both cases, might be paid in the same manner with those of the district attorney; the amount to be settled by the court, or the certificate of the presiding judge.[1]

By the act limiting the number of justices of the peace in the several counties, not more than four are allowed in any town, leaving a discretion to the former council of appointment as to a smaller number. Such discretion could be exercised by the governor and council, without embarrassment; because the power then rested with, and emanated from, a single source; but according to the existing manner of appointment, the judges of the county courts, and the supervisors respectively, nominate, not exceeding four in any town; and instances have recently occurred, of nominations in which they differed as to the number. The selection on the part of the governor being confined by the constitution,[a] to a disagreement in the persons nominated, no adjustment of this difference of opinion can take place; and the town must consequently remain deprived of the same number of justices with other towns in the county. To prevent the like collisions in future, an amendment to the statute is recommended, making it imperative on both to nominate a specified number for every town in the county.

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[1] By chapter 254, provision was made for appointments for temporary service in the absence of the district attorney.

[a] Const. 1821, art. 4, § 7; see also Am. 1826.

The act to regulate sales by public auction, ought also to be so amended, with regard to the appointment of auctioneers, as to remove all doubts in prosecutions for the penalty against persons selling without authority in violation of the provisions contained in it.[2] The remarks submitted in a former communication, as to the situation of our statute book, are verified by daily experience. It is a fact, that many of our statutes are rendered inapplicable to the existing state of things under the constitution recently adopted; and principles contained in different statutes applicable to the same subject, are distributed in so many volumes, as to make an investigation difficult, and extremely laborious; almost witnout the reach of the citizen, unless he is a professional character. It is therefore submitted to your consideration, whether a revision of the laws at this time, has not become indispensably necessary.[3]

To effect material and radical alterations in the constitution and government of a country, advantageous to the great mass of the community, without molestation from abroad, or commotion at home, gives a character of stability and energy to free institutions, not known to the world, until exemplified by the people of the United States of America. The citizens of the southern part of this continent, are now engaged in an arduous conflict with the mother country, to effect the same purpose; and although their transatlantic brethren have been subdued by the arm of power, and have been prevented from establishing a government according to the choice of the Spanish nation, by the despotic measures of foreign authority, it is evident that the South American patriots will not be deterred from

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2 By chapter 47, passed February 19, the Governor was authorized to appoint auctioneers, and persons acting without having been appointed and given the requisite security, were deemed guilty of a misdemeanor.

3 By chapter 336, passed November 27, James Kent, Erastus Root, and Benjamin F. Butler, were appointed commissioners to collate, revise and publish the statutes, but this act was repealed at the next session, and a new commission created for the same general purpose.

persevering, until an effectual emancipation shall have been attained, by the establishment of a government according to the will of the people; and we have reason to believe, consonant to the liberal principles of free republican institutions.

Notwithstanding the interested feelings necessarily existing amongst our citizens with regard to the destinies of the inhabitants of this continent in particular, still it is impossible for the bosoms of freemen to be exempted from the most lively emotions in favor of the cause in which the Greeks are engaged. A nation, persecuted and depressed for centuries past, struggling to shake off the unhallowed fetters of despotism, to regain their independent national rights, must create feelings of sympathy favorable to their cause; and it affords the greatest satisfaction to observe, for the honor of the American citizens, that a deep interest in favor of their success, pervades the community, not confined to sensations of sympathy alone, but evincing by meetings publicly announced, a decided determination to render them assistance in their present perilous situation, in a manner the most inoffensive and unexceptionable in a national point of view,—conduct so laudable and disinterested, as friends of the human family, cannot fail to meet the approbation and applause of the civilized world.

The militia law of the last session, has introduced a system requiring labor and attention, beyond what could have been anticipated by the legislature, or more ample provision would undoubtedly have been made to organize under it. The duties of the adjutant-general have incessantly occupied his exclusive attention since the close of the last session; so that, with the assistance rendered in my office, where the papers are now kept on regular file, he has been enabled to perform those duties without delay or disappointment to any one, unless rendered unavoidable for the want of proper documents. It is not deemed necessary at present, to enter into a minute detail of the business of

that office. When the subject is brought up before you, it will of course be inquired into. It is sufficient on this occasion to state, that vacancies and elections constantly produce returns, with various questions to be submitted for the decision of the commander-in-chief, and a continued and extensive correspondence is kept up with almost every part of the state, on subjects necessarily arising out of the nature of the establishment. It is, therefore, suggested, whether a department so intimately connected with the welfare and safety of a representative government, ought not to be provided with means to conduct it commensurate with its importance. Assistants, or clerks, and a room for an office, to which citizens can resort to transact their business, and in which the numerous public documents connected with the department might at all times be found, it seems to me, has become necessary.

The operation of the system lately adopted, of electing militia officers, cannot at this early period be ascertained; but from the beneficial effects produced in a neighboring state, where a similar system prevails, we have reason to expect it will eventually prove advantageous. The greatest care and attention has not been wanting to enforce a strict compliance with the directions of the statute, to prevent appeals as far as possible, not in some instances, however, to be avoided; nor is it extraordinary that it should be so on the first introduction of a system where the accustomed practice of being governed in promotions by rank or seniority is frequently disregarded by the electors, and where the irritation excited by being thus overlooked, oftentimes has originated appeals founded on unimportant deviations from the rules and regulations established, and the directions contained in the militia law; occurrences only to be rendered less frequent in the exercise of more enlarged and liberal views by the parties interested, which future experience will necessarily introduce and inculcate. Several useful amendments to the existing law might be suggested;

but as the subject, in all its branches, has recently been recommended to congress, (the paramount authority) it is thought most discreet and proper, in order to prevent future collision, to recommend the postponement of all amendments not exclusively within the province of the state legislatures, until the result of their deliberations shall be known.[4]

From a representation made by the commissary-general, it appears that in the month of December last, there have been received into the arsenals, from the general government, six thousand nine hundred and ninety-five stand of best quality muskets, being the balance due the state for its quota of arms, under the act of congress of April, eighteen hundred and eight, for arming the militia, and that on an application made to the war department at Washington, to deliver pieces of field artillery in lieu of a portion of those arms, it appeared they had none on hand of suitable size for field service which could be spared. The commissary-general's department consequently remains deficient in upwards of fifty pieces of field ordnance, necessary for the equipment of companies of artillery, already organized. The propriety of making an appropriation is therefore suggested, for the purpose of mounting and equipping a sufficient number of pieces of artillery for the militia service.

The state prisons, at New York and at Auburn, have both been visited by me, since the adjournment of the legislature, and, on the strictest inquiry and examination, I was pleased to find that the gentlemen under whose care and superintendence they are respectively conducted, by their judicious arrangements, as it respects the internal government of those institutions, have evidently manifested an earnest desire to secure the salutary purposes for which the penitentiary system has been introduced. After duly

[4] The militia law was amended in several minor respects by chapter 269, passed November 18.

receiving the return from the agent of the state prison at Auburn, according to the directions given to him by the ninth section of the act of the last session for the support and improvement of state prisons, &c. containing a particular statement of the duration, severity and extent, of the solitary confinement of each prisoner, I have thought proper to pardon a number of the convicts, so confined, to prevent an undue increase of their punishment, in consequence of a classification, which had been made, under the act of the second of April, eighteen hundred and twenty-one, and in pursuance of which, a number of prisoners had been confined in the solitary cells. In virtue of the fifth section of the act, making appropriations for the support of state prisons, passed the seventeenth of April, one thousand eight hundred and twenty-two, I have directed thirty convicts to be removed from the New York prison to Auburn, where the accommodations will enable the persons having the charge of that institution, to comply with the terms of their sentences; a measure which had become indispensable, to relieve the New York prison, for the want of solitary cells, and on account of the number there confined.[5]

By a concurrent resolution of both houses of the legislature, at their last session, the executive of this state was requested to communicate with the president of the United

[5] Chapter 253, passed April 12, made appropriations for the maintenance of the prisons, and specified certain counties from which persons sentenced were to be sent to Auburn. The act appointed Stephen Allen, Samuel M. Hopkins, and George Tibbits, commissioners to visit the state prisons at New York and Auburn, to examine into all matters relating to the economy, government and discipline of the said prisons, and the comparative efficacy of the different systems of punishment pursued in said prisons, and to report to the legislature at the next session whether any, and if any, what improvements may be made in the government and economy of said establishments, and in the manner of employing or punishing the convicts; and also to prepare and report such alterations and amendments of the laws for the punishment of crimes as they shall deem necessary. The keeper of the Auburn prison was required to furnish a Bible for each prisoner in solitary confinement, whether requested or not.

States, in relation to the unjust operation to the interest and prosperity of a large portion of the citizens of this state, by the enforcement of the act of the parliament of Great Britain, passed the fifth of August, one thousand eight hundred and twenty-two, regulating the commercial intercourse of the United States with the Canadas. A letter has accordingly been addressed by me to the president on the subject contained in those resolutions. By his late message to the congress of the United States, it appears that the subject has been taken up by the general government, and that a negotiation has been opened with the British nation, embracing the just claim of the citizens of the United States, inhabiting the territories bordering on the lakes and rivers which empty into the St. Lawrence, to the navigation of that river to the ocean, which it is to be hoped will terminate in the removal of the existing restrictions and impositions, to which the citizens, residing in the western and northern parts of this state, are subjected.

The agriculture of the state, is rapidly progressing, in advantageous and substantial improvements; and, it is to be regretted, that the manufacturing interests, so essentially connected with it, the soil producing many of the raw materials, is not in the same progressive state.

To ensure the permanent independence and substantial interest of a nation, proper and energetic measures ought not to be neglected by its government, to prevent, as far as practicable, a dependence on foreign supplies for articles of domestic consumption. During the late war with Great Britain, manufacturing establishments of various descriptions, for fabrics since imported to an alarming extent, were in successful operation, sufficiently so to test our ability and capacity to supply the necessities of the country, but, for the want of due encouragement, by counteracting duties, to prevent the destruction of those manufactories, as well as to avoid an alarming foreign indebtedness on the part of our citizens, some of them have ceased

to exist, but others have been continued by the unwearied perseverance and enterprise of meritorious citizens, whose confidence in the fostering care of government, eventually, to sustain them, could not be shaken; and I trust that the period has at length arrived, when an almost united and general opinion, favorable to their support, by discreet and competent encouragement, pervades the community; and which, it is confidently hoped and expected, will not be disregarded by the constituted authorities of the country.[6]

During the last year, the Champlain canal has been rendered navigable to the Hudson river, at the city of Albany, and the completion of the Erie canal, the ensuing season or the summer following, is rendered morally certain, so that the period is not distant, when we shall fully experience the benefits and important advantages secured to our citizens, by this unexampled improvement. A more propitious era, connected with the growth and prosperity of our country, cannot well be imagined; and in taking a retrospective view of the enterprise and patriotism of our predecessors, it is difficult to suppress the most endearing emotions of respect and gratitude, for the memory of those

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[6] The legislature adopted the following concurrent resolutions:

"*Resolved*, That the agricultural, manufacturing and commercial interests of our country, are inseparably connected; that the advancement of the one should not be at the expense and ruin of the others; that the establishment and extension of manufactures from materials of domestic production, sufficient to supply our home market, would secure to our citizens all the pecuniary benefits arising from the art of manufacturing, and in the lapse of a few years would become no inconsiderable source of revenue; that it would open an extensive and honorable field of employment to a great mass of the community, and would enable every citizen to procure, with ease and facility, the necessaries and comforts of life; that it would have a direct tendency to promote agriculture, by establishing at home a market, sure and unfluctuating, and by increasing the value of the productions of the soil, give an incentive to active and productive industry; that it would tend to relieve the country gradually, and in a short time entirely free it, from a dependence on foreign nations, for the clothing and other necessaries essential to our comfort and happiness.

Resolved, That our senators and representatives in congress, be requested to use their exertions, to obtain such a revision and regulation of the present tariff, as shall protect the agriculture and manufactures of our own country.

Resolved, That his Excellency the Governor, be requested to transmit a copy of the foregoing resolutions, to each of the senators and representatives of this state, in the congress of the United States."

with whom this vastly important and useful project of connecting the western and northern lakes with the waters of the Hudson, first originated. On examining our statute book, we find as early as seventeen hundred and ninety two, within nine years after our revolutionary struggle, and whilst the western and northern parts of the state were a perfect wilderness, a legislature composed almost exclusively of those who had contributed towards achieving our independence, and whose zeal and devotion for their country's good, it seems did not cease with that memorable event, passing a law incorporating two inland navigation companies, one for the western and another for the northern part of the state, both of which commenced their operations and expended large sums of money. The northern company soon desisted, but the western continued their exertions, although comparatively circumscribed, on account of the situation of the country, and the source from whence their funds were derived. But those incipient measures introduced further inquiry and investigation, and after a great portion of the western and northern parts of the state became inhabited, the subject claimed and received the attention of many of its enterprising citizens; who caused examinations and surveys to be made, which resulted in a conviction that the undertaking was too extensive, and probably, not within the reach of private capital, and that this great work could be accomplished only by the state itself. This opinion continued to gain ground, until it became manifest that a large and respectable portion of the citizens were its advocates; and the proper period to forward the views and intentions of its friends and supporters soon arrived. Measures were accordingly adopted, to proceed the most effectually in the prosecution of the work, and after extinguishing the existing rights of the western inland navigation company, those measures were persevered in, by the people of this state with ardor and uncommon unanimity; abundantly evinced by the

united and uniform support of their representatives, in voting annual appropriations of sums of money, unusual in amount to be granted within so short a period for the like purpose, by the government of other countries, possessed of much greater and more extensive resources.

The Champlain canal having been finished, and the Erie canal being in operation for upwards of two hundred miles, it is submitted to you, whether independent of providing the necessary means to enable the commissioners to finish the western section, legislative interposition has not become necessary, in conducting the extensive concerns connected with the operation of the system, as far as it has progressed; and to expedite the adjustment of existing claims for damages of meritorious citizens, who have patiently submitted to privations arising out of the necessity of the measure, for public good; but from whom a just and equitable remuneration ought no longer to be withheld.[7]

The navigation of the Hudson since the introduction of the canals, has assumed an importance highly interesting to the citizens of this state. The same subject has heretofore been presented to the legislature, and commissioners have been appointed by a law passed for the purpose, to report a plan for improving the navigation of the river. Their report has been received, and appears on the journals. By it, two plans, with estimates of their respective expenses, are given, one for deepening the channel of the river, and the other for a lateral canal for ship navigation, but canaling is recommended as the most efficient plan, if it should be judged that the benefit to be derived from it, is of sufficient magnitude to make its adoption advisable. The report further states, that no extraordinary obstacles

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7 Chapter 255, passed April 12, authorized a further loan of $1,000,000 to be used for canal purposes, and chapter 279, passed November 20, provided for the improvement of the Oswego River for purposes of canal navigation. By chapter 242, passed April 12, the commissioners of the land office were directed to take proceedings for the survey and sale of Grand Island which was to be divided into lots not exceeding 200 acres each. The proceeds of the sales were to be used for canal purposes.

are presented to its execution, that the track indicates facilities which were not anticipated before it was minutely explored. The accuracy of estimates, emanating from so respectable a source, cannot be questioned; and the amount of the expenses stated, ought not to be put in competition with the positive advantages to be secured by it to the country. The vast amount of property produced by the soil and by the industry of the western and northern citizens of this state, to be benefitted by sales at a market for direct exportation, can readily be anticipated. If congress, therefore, would authorize a small tonnage duty on vessels passing through the contemplated canal, to be exacted by this state until the debt created to complete it, shall be paid off, and suffer such duty to be continued in aid of the funds set apart for the payment of the canal debt, until the final extinguishment of that debt, it would be an object mutually beneficial to the state and to the general government; as no reasonable doubt can be entertained but that the arrangement would in a short time eventuate in a removal of the duties on salt, and in such a diminution of toll as would require a sum, sufficient only to defray the repairs and other expenses, incident to the use of the canal; while congress at the same time would obtain an additional port of entry of considerable importance, and an extensively useful national improvement without immediately resorting to the public funds for its accomplishment. If it should be deemed expedient, to adopt the plan of a lateral ship canal, for the improvement of the navigation as suggested in the report alluded to, a law might be passed authorizing the prosecution of the work, upon condition that the assent of congress to the collection of such tonnage duties, as are specified in the act, should first be obtained by the commissioners named in it, to conduct the construction of the canal.[8]

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[8] See *post*, p. 48, for a note on Hudson River improvement and federal tonnage on Erie canal.

The growing importance of the New York harbor, not only to the state at large, but as an arm of the sea, to the United States, claims the care and attention of the legislature; the extension of improvements into the East River, under grants by the corporation on the Long Island shore, and the opposite side, is represented as assuming an alarming aspect, by contracting the navigation of the river, and consequently increasing the rapidity of the tide, which if continued must eventually render the anchorage dangerous and insecure, although hitherto considered the safest harbor around the island. The propriety is therefore suggested of appointing an intelligent and respectable person as a commissioner to ascertain and prescribe the extent beyond which no encroachments for the future shall be permitted; and to which grants for the right of soil shall hereafter be limited; or of adopting such other measures as you may deem expedient, more effectually to avoid and prevent consequences so highly detrimental to the community.

The situation of the treasury is not materially changed from what it was last year, excepting the increase of the public debt, occasioned by further canal loans. It appears that the receipts, during the year ending the thirtieth of November, one thousand eight hundred and twenty-three, were one million one hundred and thirty-two thousand four hundred and eighty-four dollars and eighty-six cents; that there has been paid out, during the same year, one million one hundred and four thousand nine hundred and sixty-four dollars and forty-four cents, leaving a balance in the treasury of one hundred and thirty-six thousand three hundred and forty-four dollars and ninety-five cents, to which is to be added sundry sums, deposited in the bank of the Manhattan Company, not yet charged to the treasurer, for want of certificates amounting to seven thousand five hundred and thirty-five dollars and twenty-nine cents, making an aggregate balance of one hundred and forty-three thou-

sand eight hundred and eighty dollars and twenty-four cents, from which must be deducted appropriations for specific purposes, amounting to one hundred and eighteen thousand five hundred and five dollars and seventy-nine cents, and the further sum of eighteen thousand one hundred and seventy-one dollars, for notes of insolvent banks remaining in the treasury which leaves a balance, on the thirtieth day of November, one thousand eight hundred and twenty-three, of seven thousand two hundred and three dollars and forty-five cents, for the ordinary expenses of government.

The public debt on the first of December, one thousand eight hundred and twenty-three, amounted to six million eight hundred and ninety-five thousand five hundred dollars, of which, five million eight hundred and forty-three thousand five hundred dollars, are for monies borrowed to complete the canal. The sources of revenue appropriated to extinguish the canal loans, continue sufficient to meet the payment of the interest, without resorting to any other fund. It is, however, to be observed, that the repairs of the canal, as yet, have been paid out of the principal sums loaned; but, after the whole work is completed, so that the amount of the incidental expenses of the canals may be ascertained and deducted from the amount of toll during the season, a more accurate estimate will be formed of the actual avails of that fund.

Since the law of the last session, in relation to the salt springs in the county of Onondaga, has been in operation, it is encouraging to find, that the character of the salt manufactured there, has not only been restored, but it has been sufficiently improved, to remove, in a great degree, former prejudices against the use of it. A source of revenue so valuable, I have no doubt will continue to receive the superintending care of the legislature. To preserve the purity of the salt, and secure the confidence of the community, in the general use of it, is an object of too

much importance to be neglected, and so essentially connected with the fiscal concerns of the state, that it should be regarded as a subject, at all times, deserving the highest consideration and attention.

The choice of electors of president and vice-president, has excited much animadversion throughout the nation; and it is to be regretted, that a uniform rule on this subject is not prescribed by the constitution of the United States. It is manifest, that the manner of electing may have an essential effect on the power and influence of a state, with regard to the presidential question, by either dividing the votes, or enabling the state with greater certainty to give an united vote; and until a uniform rule is ingrafted in the constitution of the United States, the manner of electing will continue to fluctuate; and no alteration made by any one state, will produce a material change in the various modes now existing throughout the union. In some states the people will vote by a general ticket; in some by districts, and in others by the Legislature; and no practical remedy probably does exist, competent to remove the evil effectually, except by an amendment to the national constitution.[b]

Although this state has heretofore sanctioned an attempt to accomplish that important object, which proved unsuccessful, the measure, on that account, should not be abandoned; and as the subject has recently been brought before congress, it is to be expected, that another opportunity will shortly be presented, for the legislature of this state to sanction an amendment, not only establishing an uniform rule in the choice of electors, but also securing the desirable object of directing such choice to be made by the people. A more propitious period, evincing its propriety, and consequently affording a more favorable prospect of obtaining a constitutional number of the states to

[b] U. S. Const. art. 2, § 2; see also 12th Am.

assent to it, I am inclined to think, has not presented itself, since the organization of the government.

Persuaded, that you, as the representatives of a free people, will only be influenced by reason and true patriotism, it is submitted to your wisdom and discretion, whether under existing circumstances, the present manner of choosing electors, ought, at this time, to be changed.[9]

The executive of the state of Tennessee has forwarded to me a copy of a preamble, and of certain resolutions, adopted by the general assembly of that state, with a request to lay them before the legislature of this state. The same are accordingly transmitted.[10]

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9 See *post*, p. 50, for a note on the method of choosing presidential electors.

10 The Tennessee communication was in effect a protest against the practice of nominating candidates for president and vice-president by congressional caucus. The question was argued at some length in a preamble and the objections were summarized as follows:

"1. A caucus nomination is against the spirit of the Constitution.

2. It is inexpedient and impolitic.

3. Members of Congress may become the final electors, and therefore ought not to prejudge the case by pledging themselves previously to support particular candidates.

4. It violates the equality intended to be secured by the constitution of the weaker states.

5. Caucus nominations may in time (if the practice is not effectually prevented by the interference of the states) acquire the force of precedents, and become authoritative, and thereby endanger the liberties of the American people."

The General Assembly thought the true spirit of the Constitution would be "best preserved by leaving the election of the president and vice-president to the people themselves through the medium of electors chosen by them, uninfluenced by previous nominations made by members of Congress."

The Tennessee resolutions were referred to a select committee in the Senate, and that committee presented a long report considering the subject of congressional nominations from the constitutional point of view sustaining the right to make such nominations, and also from the point of view of expediency, arguing that it was the most convenient method of presenting candidates for the offices of president and vice-president. The only substitute considered by the committee was state nominations, which it was urged would be impracticable for the reason that there might be as many nominations as there were states, which would create confusion instead of simplicity and harmony

At the January term of the general session of the peace of St. Lawrence county, of the last year, William Kirby was indicted for the murder of John Hughes, aged four years; and also for the murder of Frances Kirby, his daughter, aged two years; and at a court of oyer and terminer, held in September last, in that county, he was tried and convicted upon the indictment for the murder of John Hughes, and sentenced to be executed on the sixth of November following. From the representation of the judge who presided at his trial, and the district attorney who prosecuted on the part of the people, and on an examination of the testimony transmitted to me by the latter gentlemen, facts are presented sufficient to induce a belief that the prisoner was insane when he committed the alleged murder. I have, therefore, deemed it my duty to postpone his execution until the second day of April next, in order to annex the condition to his pardon, of imprisonment in the state prison during his natural life, under a full conviction that it would be dangerous and unsafe to the community to suffer him to go at large. But as the inspectors of the state prison were not authorized to receive him without a law for the purpose, I have thought proper to represent his case to the legislature, so that necessary measures might be adopted to enable the officers of either of the

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in working out the issues involved in an election. The committee thought that a change of policy, by abandoning congressional nominations would reduce "the influence of this state to a level with that of the smallest members of the American confederacy."

The Tennessee resolutions were accordingly disapproved, and a concurrent resolution was adopted declaring that "while the Senate and Assembly of the State of New York, do not deem it proper in their legislative capacity, to recommend it to the Senators and Representatives of this state, to assist in the nomination of candidates for those offices, they are yet free to declare, that the practice which has from time to time been adopted, of nominating such candidates, by a meeting of the republican members of Congress, assembled at Washington, is not, in their opinion, inconsistent with either the letter or spirit of the Constitution."

state prisons to receive and retain him, according to the contemplated condition upon which he may be pardoned.[11]

The literary institutions of the state, are in a highly respectable and flourishing condition, and there is reason to believe, that their extensive usefulness will prove an ample remuneration for the support and patronage received from the legislature.

It is a subject of great felicitation to observe so general a sentiment prevailing in the state, in favor of the dissemination of useful knowledge. The advantages afforded in the establishment of common schools, have been embraced in almost every part of this state, and, independent of many charitable institutions, meritorious citizens have, in many places, extended their benevolence to the children of indigent parents, by the means of Sunday schools; and the adoption of those humane and truly laudable measures, have induced numbers to exchange their accustomed habits of indolence and dissipation on that day, for the more profitable pursuit of obtaining a common education. The prevalence of such enlightened sentiments, and generous feelings, will essentially contribute to secure to the public, the benefits of the talents of many useful and virtuous members of society, otherwise allowed to remain in obscurity, and will have a direct tendency to afford permanent and substantial advantages to a government, where the sovereignty rests altogether with the people.

JOSEPH C. YATES.

Albany, January 6, 1824.

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11 Chapter 76, passed March 6, directed the State prison inspectors to receive and keep Kirby on the order of the Governor. The act also contained a general provision applicable to subsequent cases directing the inspectors to receive and safely keep all persons, who while under sentences of death, were pardoned on condition of life imprisonment.

It will be noted that the second Constitution, article 3, section 5, did not specifically confer on the Governor the power to commute a sentence of death to imprisonment for life.

SPECIAL MESSAGES.

January 16. To the Assembly: Transmitting a copy of a treaty made with the Stockbridge Indians on the 16th of September, 1823.

February 2. To the Assembly: Transmitting a resolution adopted by the Legislature of Georgia, proposing the following amendment to the federal constitution:[12]

"That no part of the constitution of the United States ought to be construed, or shall be construed, to authorize the importation or ingress of any person of color, into any one of the United States, contrary to the laws of such state."

February 5. To the Assembly: Transmitting the annual report of the Commissary General.

February 9. To the Assembly: Transmitting the annual inspection return of the militia received from the Adjutant General.

February 14. To the Assembly: Transmitting the following resolutions adopted by the general assembly of Ohio:[13]

"*Resolved*, by the General Assembly of the State of Ohio, That the consideration of a system providing for the gradual emancipation of the people of color, held in servitude in the United States, be recommended to the Legislatures of the several States of the American Union, and to the Congress of the United States.

Resolved, That in the opinion of this General Assembly, a system of foreign colonization, with correspondent measures, might be adopted, that would in due time effect the entire emancipation of the slaves in our country, without

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12 The Assembly adopted a resolution declaring it inexpedient to concur in the Georgia proposition for an amendment to the federal Constitution prohibiting the importation or ingress of colored persons into any state.

13 An Assembly committee submitted a report and resolutions declaring it inexpedient to concur in the Ohio proposition relative to the gradual abolition of slavery, but the matter seems to have received no futher attention.

any violation of the national compact, or infringement of the rights of individuals; by the passage of a law by the general government, (with the consent of the slave-holding states,) which should provide that all children of persons now held in slavery, born after the passage of such law, should be free at the age of twenty-one years, (being supported during their minority by the persons claiming the service of their parents,) providing they then consent to be transported to the intended place of colonization — also,

Resolved, That it is expedient, that such a system should be predicated upon the principle, that the evil of slavery is a notional [national] one, and that the people and the states of this Union, ought mutually to participate in the duties and burthens of removing it."

February 24. To the Assembly: Transmitting the report of the Governors of the New York Hospital, and also the return of the inspector of flour and meal for New York and Kings counties.

March 4. To the Assembly: Transmitting a resolution adopted by the legislature of Maine disapproving the foregoing Georgia proposition relative to the importation of colored persons.

March 12. To the Assembly: Transmitting a communication from the Commissary General, recommending an appropriation for repairs on the fortifications at Fort Richmond on Staten Island made necessary in consequence of damages inflicted by recent hurricanes.

March 19. To the Senate:

"GENTLEMEN.—I herewith transmit a communication, received from the christian party of the Seneca Nation of Indians, residing near Buffalo, together with a letter from Jasper Parish, agent, respecting the missionary establishment in Seneca village, concerning which there is now an application before the legislature.

JOSEPH C. YATES."

Albany, March 18th, 1824.

It appeared from the accompanying papers that certain Indians had opposed the work of missionaries on the reservation, and had taken steps to procure the removal of those who had become residents of the reservation for the purpose of carrying on their work, and who, it was alleged, had thereby violated the intrusion act of 1821, chapter 204, which among other things prohibited white persons from residing on an Indian reservation.

March 19. To the Senate: Transmitting a communication from the Commissary General relative to the settlement of New York's account against the United States, growing out of the late war.[14]

March 20. To the Assembly: Transmitting a resolution adopted by the General Assembly of Ohio disapproving the Georgia proposition relative to the importation or ingress of colored persons.

April 1. To the Assembly: Transmitting a copy of a treaty made with the St. Regis Indians on the 16th of March, 1824.[15]

April 3. To the Senate:

Veto of a bill entitled "an act to authorize Sylvester F. Peck to make use of the waters of the Onondaga Creek for hydraulic purposes."[16]

"Because the bill appropriates land under the waters of the Onondaga creek, being public property, for private purposes, which, according to the ninth section of the seventh article of the constitution, requires the assent of two-thirds of the members elected to each branch of the

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14 By chapter 163, passed April 3, the comptroller and treasurer were authorized to settle the accounts of the agent appointed to negotiate the settlement of the State's claims against the United States.

15 This treaty with the St. Regis Indians included the so-called mile square tract in the town of Massena in the county of St. Lawrence, and was ratified by chapter 227, passed April 10.

16 The Peck bill, relative to the use of Onondaga creek, was passed over the veto, and became a law, chapter 315, on the 22d of November.

legislature; and it does not appear, that the requisite number of the members elected to the Assembly have voted in favor of it."

April 5. To the Senate:

Veto of a bill entitled "an act for the relief of the heirs of William Weyburn, deceased."[17]

"Because the bill appropriates public property for private purposes, which, according to the 9th section of the 7th article of the constitution, requires the assent of two-thirds of all the members elected to each branch of the legislature; and it does not appear, that the requisite number of the members elected to the Senate and Assembly, have voted in favor thereof."

April 12. To the Assembly:

Veto of a bill entitled "an act authorizing Gustavus Jewell and others, to erect a wing dam in the Oneida River, at Caughdenia reef in the counties of Oswego and Onondaga."[18]

"Because the bill authorizes Gustavus Jewell and others, to erect a wing-dam in a certain part of the Oneida river therein named; and it also authorizes all such stone as may be found in the bed of the said river, on the reef mentioned in the said bill, to be used by the said Jewell and his associates, in the construction of the said wing-dam, or in the construction of mills, or both. The bill does not appear to be passed by two-thirds of either branch of the legislature; although, by the ninth section of the seventh article of the constitution, no bill appropriating public monies or property for local or private purposes can pass without the assent of two-thirds of each branch

[17] The Weyburn bill was passed over the veto, and became a law, chapter 191, on the 8th of April.

[18] The Jewell bill was passed over the veto, and became a law, chapter 298, on the 24th of November.

of the legislature. The bill assumes, that the Oneida river is a public highway, and consequently any appropriation thereof, or of the public property appertaining thereto, however small in the amount of value, comes within this constitutional provision."

April 12. The Legislature adjourned to meet the first Tuesday of November, 1824.

1824. AUGUST. EXTRAORDINARY SESSION.

The Legislature met in extraordinary session on the 2d of August, pursuant to the following proclamation by the Governor:

A PROCLAMATION,

By JOSEPH C. YATES, Governor of the State of New York.

Whereas, at the commencement of the late session of the legislature in January last, in my message to that honorable body, after stating the practical operation of the constitution of the United States since its adoption, in reference to the choice of electors of president and vice-president throughout the different states, I did communicate, that "as the subject had been recently brought before congress, it was to be expected that another opportunity would shortly be presented for the legislature of this state to sanction an amendment, not only establishing a uniform rule in the choice of electors, but also securing the desirable object of directing such choice to be made by the people;" at the same time declaring and believing, that "a more propitious period, evincing its propriety, and consequently affording a more favorable prospect of obtaining a constitutional number of the states to assent to it, had not presented itself since the organization of the government."

And whereas, since the delivery of my said message to the legislature, the subject above referred to has been discussed in the congress of the United States, and by one branch thereof has been indefinitely postponed; and the said congress having since adjourned, without further acting upon it, whereby the just expectations of the people of

this state in respect to the said contemplated amendment to the constitution of the United States have been disappointed.

And whereas, a bill was introduced into the honorable the assembly, and passed by an almost unanimous vote, giving to the people the right of choosing the said electors of president and vice-president of the United States, and upon being sent to the senate, the select committee of that honorable body, in concluding their report, did express an opinion "that it would not be expedient to pass the bill from the assembly or any other bill, changing the present mode of appointing electors of president and vice president of the United States, or at least until the efforts which were then seriously making in congress to establish an uniform rule of appointment, by an amendment to the constitution of the United States, by which the people could elect by districts, had either terminated in the adoption or rejection of such amendment by that body; whereupon a majority of the honorable the senate of this state did resolve as follows, to wit: "that it is expedient to pass a law at the present session of the legislature, giving to the people of this state the choice of electors of president and vice-president, and by a general ticket," and afterwards resolved, "that the further consideration of the said bill be postponed until the first Monday of November next." *And whereas,* at the time the said bill was postponed by the senate of this state, the subject of amending the constitution of the United States was still pending before congress.

And whereas, since the postponement of the said subject by one branch of the legislature of this state, and the indefinite postponement thereof by the senate of the United States, the people of this state appear to be much excited and alarmed, that their undoubted right to choose electors of president and vice-president of the United States is still to be withheld from them.

And whereas since the adjournment of congress, without having recommended any amendment to the constitution of the United States in relation to the premises; and from the facts above specially recited, it is deemed necessary and proper to convene the legislature at an earlier period than the day to which they stand adjourned, to consider this highly important subject, and to quiet the minds of the people of this state.

Now, therefore, by virtue of the authority vested in me by the fourth section of the third article of the constitution, authorizing the governor to convene the legislature on extraordinary occasions, I do, by this my proclamation, require the members of the senate and assembly of this state to convene as a legislature, in their respective chambers at the capitol in the city of Albany, on Monday the second day of August next, at noon, instead of the day to which they now stand adjourned; then and there to consider the important subject referred to in this proclamation, and to transact all such other business as to the said legislature shall appertain, and by them shall be deemed expedient to be done.

It witness whereof, I have hereunto subscribed my name, and affixed the privy seal of the state, at the city of Albany, the second day of June, in the year of our Lord one thousand eight hundred and twenty-four.

JOSEPH C. YATES.

By the Governor.

C. Y. LANSING, Private Secretary.

At the opening of this session the Governor sent to the Legislature the following

MESSAGE.

"GENTLEMEN OF THE SENATE AND OF THE ASSEMBLY.—In the constitutional exercise of a power delegated to the executive, I considered it a duty to convene the legislature for the purpose of submitting to them a subject of vital importance to the community.

A copy of the proclamation, under which you were called, accompanies this message, containing a brief summary of the causes which induced me to adopt the measure; and it is submitted to the legislature, under a full conviction, that in convening them, I have performed a duty required of me by the responsible situation in which I was placed, and by the strong and very decided sentiments of the people of this state; and confiding in the calm and dispassionate consideration, which a wise and patriotic legislature

will bestow upon the matters thus submitted, I cheerfully repose myself upon the intelligence and virtue of the people and their representatives, fully aware of the responsibility I have assumed, and, be assured, gentlemen, wholly indifferent to personal consequences, when performing a sacred and impressive duty to the state.

There are certain fundamental truths in the theory and practice of our government, which cannot be altered or obscured by the passions of man, and which, certainly, ought not to bend to their interest or convenience. By one of them is inculcated a principle, in the support of which our forefathers fought and bled, and which can never be lost sight of, without the loss of our rights and independence. It is, that the people alone are the true and legitimate source of all power.

The framers of our new constitution, fully aware of this, were determined to secure to themselves, and to posterity, the blessings of freedom, by most sedulously guarding every avenue to corruption and intrigue, by the enlargement of the right of suffrage, the permanency and independence of our judiciary, and the dependence of the executive and legislative branches of our state upon the will and pleasure of their constituents; and by thus balancing the different powers and parts of the constitution, vigor and safety to the whole, were communicated and secured. A frequent recurrence, therefore, to first principles, however familiar, is, in times of difficulty and danger, the most certain safeguard of our freedom.

If, then, as our bill of rights declares, 'no authority shall, on any pretence, be exercised over the citizens of the state, but such as shall be derived from, and granted by, the people of this state,' how interesting to us all, to execute our duty as good citizens and faithful officers, by a strict and undeviating adherence to the public will, when clearly ascertained and fairly expressed. Regardless of the conflicts of passion, the resentments of disappointed

ambition, and the corrupting influences of intrigue and faction, we should proceed to the exercise of those acts, which will secure to us the approbation of our own consciences, and the approving voice of impartial posterity.

You will perceive from the proclamation by which you are convened, that the subject in relation to which you are called, has reference to a very interesting part of our government — the choice of electors of President and Vice-President of the United States.

When we look at the constitution of the general government, and consider the exposition which a vast majority of the union have given to that part of it which relates to this important subject, we cannot entertain a reasonable doubt that the spirit and good sense of that instrument is best consulted by giving to the people the choice of those electors. In no less than nineteen states out of the twenty-four, the electors are chosen by the people; and it is rendered highly probable from recent events, that Vermont will be added to the number. A principle, then, so congenial with the feelings of the people, so deeply interwoven in the very form and structure of our government, and so peculiarly adapted to the fair and legitimate exercise of the right of suffrage secured to us by our state constitution, can never be at war with the honor, peace, or safety, of our country. Adverting to this principle in the message I had the honor to send you in January last, I expressed my full conviction, that it was 'a desirable object of directing such choice to be made by the people;' and, I am free to acknowledge, that I considered it also important that it should be uniform throughout the union, and that any interference by the legislature, whilst the subject was before congress, would be premature — that reason, however, by the recent adjournment of that body, has ceased to exist.

Although the number of states in which the legislature make the choice of electors is small, yet I know of no mode

in which the object alluded to could be attained throughout the union, but by the intervention of congress, or by the legislatures of a constitutional majority of the states; and I did entertain the belief that the incipient step would be taken by congress, and that when taken, it would furnish a basis for the legislature of this state to act upon in passing a law.

In this point of view, I did not consider the ultimate success of any proposed amendment throughout the United States, immediately material or important; as I was persuaded, that any amendment proposed by congress would at all times be treated with deference and respect, and might have been adopted in principle by this state in season for the approaching election of president and vice-president of the United States. I was confirmed in the view thus taken of the subject, by the elaborate report of the committee of the senate of this state, which, whilst it recommended to that body not to pass a law giving the people the right to choose the electors, stated, among other reasons for its recommendation, that it ought not to pass, until at least the efforts making in congress to amend the constitution of the United States were adopted or rejected.

It is true, that the senate of the United States had indefinitely postponed the subject before the adjournment of the legislature of this state in April last; but still it remained undisposed of in the house of representatives, and might have been even called up and reconsidered in the senate.

It was also known, that it was intended by those friendly to the measure, to bring forward the consideration of the same subject in the house of representatives, after the senate of the United States had indefinitely postponed it; and that this was alone prevented by the many other important topics, which pressed upon the immediate attention of the national legislature, until at length it adjourned

without performing an act to which the nation had looked with deep solicitude and interest.

Thus, the hopes of the senate of this state, and of its house of assembly, were disappointed; and nothing remained in this extraordinary crisis, but to exert that power, which the constitution of the state, for the benefit of the people thereof, had delegated to its executive; or quietly to suffer the wishes and expectations of the people, and of their legislature, to be frustrated.

Permit me, briefly, to allude to the calm and deliberate review which I took of this subject at the time of the adjournment of congress.

Very soon after the commencement of the session in January last, a bill was introduced into the house of assembly, in accordance with the prevailing sentiments and wishes of the people; and notwithstanding much discussion upon the provisions of the bill, very little opposition was expressed to its general principle.

The bill passed the assembly with uncommon unanimity, only four members voting against it. It was then sent to the senate, and the committee to whom it was referred made a report, to which I have already alluded. A majority of the senate thereupon solemnly declared, that it was expedient to pass a law at the then session of the legislature, giving to the people of this state, the choice of electors of president and vice-president of the United States, and by a general ticket. Its almost immediate and simultaneous postponment by the senate till November next, may have been produced by the fact, among others, that as congress was still in session, it would be proper to learn the sense of that body before the bill was finally disposed of.

If this, or some other reason equally well founded, did not exist, it would be viewed by the community as a singular phenomenon, that a measure, grounded on a general principle, concurred in by the two branches of the legisla-

ture, should in the end be defeated; on the contrary, I was bound to notice the declaration made by the senate and assembly, and to believe that those honorable branches of our government were willing and desirous of giving to the people the right of choosing the electors.

If these circumstances grew out of the fact, that the senate of this state had postponed the subject, in the hope that congress might still interfere, by recommending an amendment, then, as soon as congress adjourned, without doing so, it became my duty to convene the legislature at an earlier period than the day fixed by law, and to which they stood adjourned, to afford them an opportunity of passing the bill so anxiously required and expected by the community at large.

It became a duty, from the many extraordinary circumstances connected with the measure, from the constantly increasing solicitude of the people, in its favor, and from a due regard to the honor of the state.

If, under such peculiar circumstances, I had hesitated to pay a just deference to public sentiment, and legislative declarations, it would have subjected me to the merited reproaches of a free and enlightened people. Having thus performed what, in the view taken of this highly important subject, I considered an incumbent duty, on my part, it now remains with you, gentlemen, to adopt such a course, with regard to the choice of electors, as you, in your wisdom, may think most consonant with the wishes and expectations of your constituents; and in recommending the passage of a law giving it to the people, it is also satisfactory to me to reflect, that its adoption will occasion no additional expense to the state, as the necessity otherwise of your again meeting in the month of November next, will be thereby obviated and removed. [See note 9.]

Should the legislature be engaged in any other business than the immediate purpose for which it is now called, or in the unfinished business of its last meeting, I would then

recommend the propriety of investigating another subject, which I consider as connected with the safety of our citizens, and the prosperity of our state.

The deep interest which is so justly felt in our steamboat navigation, and the fatal accidents which have recently attended the operation of its machinery, in several instances, indicate the necessity of an early inquiry into the causes of those misfortunes, and of adopting regulations, by law, for inspecting, at stated intervals, or for otherwise ascertaining the condition and safety of the apparatus used in such navigation, to avoid, in future, as far as practicable, the awful consequences arising from mismanagement, or carelessness.

I cannot forbear, at this extra session of the legislature, to mention the anticipations so fondly cherished by the American people, that the only surviving general officer of the revolution, the friend and companion of Washington, and who has been so conspicuous for his disinterested patriotism and devotedness to the liberties of man, is expected shortly to visit our country. With the name of Fayette, are associated the most tender and interesting recollections; and that country, whose independence and freedom he so essentially contributed to establish, can never be indifferent to his welfare, nor be wanting in the hospitalities due to its noble benefactor. I doubt not, gentlemen, that you will adopt such measures for receiving this distinguished patriot, at the seat of government, should he visit this city, as will do honor to a grateful people.

JOSEPH C. YATES."

Albany, August 2d, 1824.

SPECIAL MESSAGES.

August 5. To the Assembly:

"GENTLEMEN.—I have the honor to transmit a letter received a few days since from the department of war

of the United States, concerning the purchase of a site on New Utrecht point, at the Narrows, in the harbor of New York. The circumstances disclosed in the letter, indicate the propriety of legislative interference; and it is submitted whether a law ought not to be passed at the present meeting of the legislature, to carry into effect the intention of Congress. Should the subject be delayed till the next session of the legislature, the season for constructing the fortification alluded to, will be lost the present year.[19]

JOSEPH C. YATES."

Albany, Executive Chamber, August 5, 1824.

The application was for an act of cession covering a little more than sixty acres already acquired and sixteen acres and a half which the government intended to acquire for the purpose indicated in the message.

August 6. The Legislature adjourned without day.

1824. NOVEMBER. THIRD MEETING.

The Legislature met on the 2d of November, pursuant to adjournment at the close of the regular session, and also pursuant to the act of 1796 and subsequent statutes, which required a meeting of the legislature quadrennially in November for the purpose of choosing presidential electors. There was no regular message at the opening of this session.

SPECIAL MESSAGES.

November 8. To the Assembly: Transmitting a treaty made with the St. Regis Indians, and another made with the Christian party of the Oneida Indians.[20]

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[19] The application for the cession of land at New Utrecht Point was granted and jurisdiction of the required land was ceded to the United States by chapter 334, passed November 27.

[20] Chapter 305, passed November 24, ratified the St. Regis and Oneida treaties referred to in this message, and provided for the disposal of the lands acquired by them.

November 16. To the Assembly: Transmitting a second communication from the War Department relative to the cession of jurisdiction over land needed for the New Utrecht fortifications. [See note 19.]

November 27. The Legislature adjourned without day.

HUDSON RIVER IMPROVEMENT; FEDERAL TONNAGE ON ERIE CANAL.

On the subject of Hudson River navigation, *ante*, p. 27, a senate committee presented the following report on the 2d of March;

"That they have had the subject under consideration, and are sensible, that the improvement of the navigation of the Hudson, is an object of great public importance. It is the great and natural highway of internal navigation, and has strong claims upon the legislature. It connects the interior canal navigation of the state with our great maritime and commercial emporium, and therefore, it cannot be viewed with indifference, or treated with neglect. Two plans have been submitted to the consideration of the committee.

The first proposes a lateral canal, of such size as will accommodate vessels of all descriptions, that usually navigate the ocean. This plan was recommended by the Governor, in his message, and it has been urged upon the committee with that scientific force which it is difficult to resist. Your committee are satisfied, that a good navigable communication, sufficient for vessels of all descriptions, between the Atlantic ocean and the city of Troy, would be of great public utility, and perhaps, no new object of internal improvement can be selected, more worthy of the attention of the state, than the one proposed in the Governor's message, and the time may not be far distant, when it will be the duty and interest of the state, to commence and carry into operation, this great object of public convenience.

But your committee believe, that the period has not yet come, when it would be either prudent or discreet, to engage in any new enterprise of such magnitude. The canals, already commenced, and hitherto successfully prosecuted, have not as yet been tested by experience; and the interest of the state, in the opinion of your committee, will be best subserved, by completing the Erie Canal with as much expedition, as the resources of the state will admit; and the financial condition of the treasury, will not justify the legislature, in commencing a new work of such expensiveness.

The second plan, presented to the committee, is to erect dams and piers, and to excavate the alluvial deposits. By this operation, it is intended to deepen the bed, contract the channel, and straighten the current of the river. This object being effected, it is believed that the force of the current will have a powerful tendency to keep the channel free from obstructions; and that it will have this effect, is contended by those, whose practical knowledge and scientific researches give weight to their opinion.

The reasons in favor of this plan, together with an estimate of the necessary expense, have been communicated to the Senate, which will supersede the necessity of repeating them in this report."

The committee introduced a bill relative to the improvement of the navigation of the Hudson, but it was not passed.

A question relating to the jurisdiction of the United States over state canals was presented in the following concurrent resolutions, which originated in the Assembly, and were concurred in by the Senate with some amendments on the 26th of November, 1824, and again adopted with the amendments by the Assembly on the 27th:

"*Whereas,* the Legislature of the state of New York, have had under their consideration a letter, dated the 6th of April, 1824, from the comptroller of the treasury of

the United States, exacting tonnage duties on boats navigating the canals of this state, from a port or place in this state, to another port or place within the same state, under the act of congress of the 18th of February, 1793; and it also appearing to the legislature, that Mr. Newton, of the committee on commerce, in the house of representatives of the United States, on the 22d April, 1824, made a report against amending the law of 1793, so as to admit canal boats to navigate the canals of this state, without enrolment or license, or the payment of tonnage duties, in which the house concurred—*And whereas* it appears to both branches of the legislature, on mature consideration, that the demand on the part of the officers of the United States, requiring boats navigating our canals, as aforesaid, to take out a license, or enrolment, and to pay tonnage duties, is not warranted by the letter or spirit of any law of the United States; and that such a construction, if justified, is, under the circumstances, so clearly impolitic, if not unjust, that the interference of the legislature is called for, in protection of the rights of its citizens, conveying their property on the canals constructed at the expense of this state only—Therefore,

Resolved, That the senators of this state, in the senate of the United States, and the representatives of this state, in the house of representatives of the United States, be and they are hereby requested, to use their utmost endeavors, to prevent any such oppressive and impolitic exaction for tonnage duties, on boats navigating the canals of this state, from being carried into effect."

PRESIDENTIAL ELECTORS.

In both houses much time was devoted to the consideration of the subject of the choice of presidential electors, *ante,* p. 30, and a committee in each house presented a long report containing historical matter and arguments on various aspects of the question. The Assembly passed a bill providing for the choice of electors by the people, to be selected by congressional districts, and the two additional electors were to be selected from the two districts having the largest population. The Senate declined to

pass the bill, preferring to leave the subject for further consideration by Congress, or by the Legislature, or the people of the State.

The extraordinary session, which began on the 2d of August, was called chiefly for the purpose of considering the subject of choosing presidential electors. The two houses did not agree as to the proper disposal of the matter. The Senate on the 3d adopted resolutions declaring that nothing had transpired making an extraordinary meeting necessary, that the Governor's proclamation convening the Legislature was not warranted by the Constitution, and had been indiscreetly issued; "that inasmuch as the transaction of legislative business in obedience to a proclamation thus indiscreetly issued, and especially in relation to a subject which had been repeatedly discussed and acted upon by the legislature at their last meeting, would sanction a precedent of dangerous tendency; it is due from the members of the legislature, as well to the constitution under which they act, and the oath they have taken to support it, as to the highest and best interests of their constituents, that they should forthwith adjourn."

The Assembly taking a different view, adopted a resolution declaring it expedient to pass a law at this time, giving to the people of this state the choice of the presidential electors, but the Senate would not even consider this for the reason that by the foregoing resolutions it had declared against any legislation at the extraordinary session. The two houses did, however, agree on an adjournment, which was had on the 6th of August. Thus nothing was accomplished at the extraordinary session.

The subject was taken up again at the November meeting, and a law was then passed, chapter 316, November 25, by which the question of determining upon the method of choosing presidential electors was submitted to the people at the next annual election, who were given the opportunity to vote on three propositions, namely, whether electors

should be chosen by districts, or on a general ticket by plurality, or on a general ticket by a majority. A majority of the votes was in favor of an election by districts.

The method of choosing presidential electors was referred to by Governor Clinton in his annual message of January, 1825, and was again considered by the Legislature at that session. A committee in each house made a report on that part of the Governor's message, and recommended a law providing for the election of presidential electors by congressional districts. A bill on this subject was passed and became chapter 33 on the 15th of March, 1825. It did not repeal the foregoing submission act of November 25, 1824. The Senate and Assembly committees, approving Governor Clinton's suggestion, said they saw no objection to a law declaring the policy of the State on this subject, even if the question had been already submitted to the people and was to be voted on at the next election. Possibly this declaration of policy contained in the new act may have affected the vote and produced the majority in favor of the district system, though there was a large vote in favor of choosing presidential electors on a general ticket. The district plan received 66,324 votes; the general ticket plan plurality 56,801; the general ticket plan majority 931. [See 1825, note 2.]

De WITT CLINTON, Governor.

The Legislature met on the 4th of January, and on the same day Governor Clinton* transmitted the following

ANNUAL MESSAGE.

FELLOW-CITIZENS OF THE SENATE AND OF THE ASSEMBLY.—Our devout thanks are due to Almighty God, for the signal blessings conferred on our country. The wise policy pursued by the national government, in cherishing our resources, in diminishing our debt, and in cultivating peace with all the world, has elevated our character abroad and confirmed our prosperity at home. It is gratifying to perceive, that the greatest maritime power in Europe, with which we are closely connected, by commerce and communication, has adopted a similar pacific policy; and that the unhallowed conspiracies in the old world, against the liberties of mankind, can find no means of support and aggression on this side of the Atlantic.

Nor has our national government, while cherishing peace, been unmindful of the exigencies of war. A comprehensive and valuable system of coast defence has been digested, and is in a train of successful development. Fortifications, in the most vulnerable points, have been erected. The war department has undergone a thorough and comprehensive re-organization, adapted at once to the economy of a peace, and the expansive requirements of a war establishment. Ordnance, arms, and other munitions, have been provided; and a system adopted of steady and progressive accumulation. An institution for military education, under the superintendence of scientific and talented men, is in a flourishing condition; and our youth are not only instructed in

* For portrait, see *ante*, Vol. II, p. 897.

war, but acquire that information which renders them useful in cultivating the arts of peace. Our navy, at once the glory and the palladium of our country, is in a state of prosperous augmentation; and our gallant and hardy seamen are increasing their nautical skill, protecting our commerce, and maintaining the honor of our flag in every sea.

These views naturally spring from contemplating the situation of our country and of Europe; and on the present occasion, are exhibited in obedience to that mandate of the constitution, which requires from the executive periodical information of the condition of the community. As a member of the confederacy, we have a vital interest in the prosperity of the whole, and necessarily participate in the common lot.

But when we look nearer home, and examine the condition of this state, without reference to its federal relations, we have equal reason for gratitude to the dispenser of all good. Our elementary schools, and our literary institutions, are prosperous beyond all former experience; the lights of religion and knowledge have increased; agriculture, commerce, manufactures, navigation and the useful arts, are in a state of unprecedented activity and successful development. The excitements and animosities which have hitherto rent us asunder, degraded our character, and impaired our ability for doing good, are yielding to a spirit of moderation and conciliation: and it is to be hoped, that in future, the great subject of competition, and the great prize of ambition, will be confined to a distinguished career of public spirit, unalloyed by the debasing influence of faction, which, in seeking its own gratification, by the elevation of a part, generally overlooks the prosperity of the whole. Our civil and political institutions are derived from the wisdom, and exist in the will of the people, the source of all rightful authority, and of all legitimate sovereignty. Conceiving it to be the sacred duty of public servants, entrusted with power and authority by the people, to consult

the wishes, as well as the interests of their constituents, it is my earnest desire, and shall be my favorite object, to recommend that course, and to pursue that policy, which may prove the most gratifying to the community, and the most auspicious to the great interests of the state. And in selecting persons for offices of power, trust and emolument, it will be my aim to look for capacity, integrity, patriotic zeal, and public services. The times are auspicious to the healing of those dissensions which have so long interfered with our general happiness, and so greatly diminished the just consideration of the state in the councils of the nation. As far as in my power, I shall be happy to embrace this auspicious occasion, and make every proper effort to promote internal peace and tranquillity. Having been elected to office, not by a party, but by the people, it is my ardent wish to cast myself upon their candor and judgment, to meet their scrutiny, to consult their will, and to promote their happiness. And I shall always be solicitous to cultivate a good understanding with the co-ordinate authorities, and to produce an harmonious union of effort for the public good. To establish a just responsibility in the executive as has been done in the legislative department, it appears to me that provision ought to be made for the publication of the journals of the senate, in relation to their executive functions. The people ought, in all cases, to know the official acts of their agents; and as the appointing power is at all times an important trust, and liable to great abuse, there ought to be no veil drawn over its exercise; but the nominations of the governor, and the vote of each senator, on the acceptance or rejection of such nominations, should be distinctly understood by the people.[1]

In 1820, while administering the government, I solicited the attention of the legislature to the importance of passing a law, by which the people could exercise their suffrages in

[1] See *post*, p. 107, for a note on the publication of senate executive proceedings.

the choice of electors of president and vice-president of the United States. The whole body of events connected with this subject, speak an admonitory language, and demonstrate that the enaction of such a law is anxiously desired by the people, and that it is enjoined by a just regard for their rights, and by the dictates of true policy. Whenever the people can enjoy the direct exercise of power themselves, no intermediate body should be interposed; and an unnecessary resort to delegated authority too frequently leads to an abuse of power, a prostration of principle, and a total disregard of the public will. It is sincerely to be desired that the constitution of the United States should be so altered, as to provide for an uniform mode of choosing electors throughout the union. In such case the system by districts would no doubt be most judicious. But while the mode is not uniform, sound policy seems to require that the choice should be left to the people by a general ticket and in the most simple and popular shape. When the right of suffrage is generally diffused, and those who exercise the elective franchise, vote by a general ticket, and the greatest or highest number constitutes an election, power is brought to the people in the most gratifying and unexceptionable manner. Ever since the political existence of this state, all our elections have been conducted on the principle of the highest number of votes; in the whole state, for governor and lieutenant-governor; in districts, for senators and representatives in congress; in counties, for members of assembly, and now for sheriffs and clerks; and in towns, for supervisors, assessors, clerks, collectors and constables, and no inconvenience has resulted. I, therefore, earnestly and respectfully recommend the passing a law, committing the choice of electors to the people by a general ticket, and by the greatest number of votes, as a proceeding required by the sovereign authority of the state, and by every consideration which ought to govern the conduct of its legislature. The statute recently passed, sub-

mitting the mode of choice to the sense of the community at the next annual election, does not interfere essentially with this measure; and if it did, it ought not to retard or prevent its immediate consummation. The voice of the people on this subject, has been audibly expressed; and it was certainly a work of supererogation to resort to this process, the tendency of which will be to perplex a question sufficiently plain and universally understood, to postpone a due atonement to the violated majesty of the people, and to exclude you from the merit of performing this great duty.[2]

In attending to the election of the chief magistrate of the nation, let us not overlook subjects of subordinate consideration, but certainly of great consequence to the welfare and good order of society.

By the constitution[a] a complex mode of choosing justices of the peace, through the instrumentality of the supervisors of towns, and judges of the county courts, is established. As this system has been found inexpedient in its operation, and exceptionable in all its important bearings, I recommend such an alteration, through the forms of the constitution, as shall bring the choice of those magistrates directly home to the people, in their primary assemblies. They are certainly much better judges of the claims and qualifications of their local magistrates, than persons at a distance, and they have stronger inducements to make good selections.[3] It is also submitted to your consideration,

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2 Chapter 33, passed March 15, provided for the election of presidential electors by Congressional districts. See *ante*, p. 50.

a Const. 1821, art. 4, § 7; see Am. 1826.

3 The Legislature of 1825 adopted an amendment providing for the election of justices of the peace for submission to the Legislature of 1826. It was again adopted by the latter Legislature, submitted to the people, and approved at the general election in 1826. The amendment provided for the election of justices of the peace by the qualified electors in each town. Those first elected were to be divided into four classes, and the rotation thus established was to be continued in subsequent elections. This subject is included in article 6, section 17 of the Constitution of 1894.

whether it would not render the minor courts more respectable, and promote good order, if the respective towns were authorized in their discretion, to provide buildings for their sittings.

As connected generally with these important topics, permit me to request your attention to a more accurate definition, a more liberal extension, and more secure enjoyment of the elective franchise. Without the right of suffrage liberty cannot exist. It is the vital principle of representative government, and it ought therefore to be effectually fortified against accident, design, or corruption. The qualifications prescribed by the constitution[b] for the exercise of the elective franchise, are full age, citizenship, residence for a designated time, payment of an assessed tax to the state or county, or exemption from taxation, or a performance of militia duty within the year, armed or equipped according to law, or assessment within the year to labor upon the public highways, and performance of the labor, or payment of an equivalent. This arrangement excludes a great body of citizens from the elective franchise; and a few simple illustrations will show its complexity, and its liability to fraud and injustice. In 1818, the state tax was two mills on the dollar; since that time, it has been reduced to half a mill on the dollar; and in a short period there will probably be no necessity for any general tax. If this should be the case, and the finances of all or any of the counties be equally prosperous, there would evidently be a disfranchisement of all those who were not taxed unless they had performed military duty, or wrought on the roads. In the same manner householders and freeholders may be deprived of the right of suffrage, even although citizens, residents, and of full age. The rights of a citizen ought not to be held at the pleasure of others, but should be fixed and unchangeable. But in both these cases, if the assessors

[b] Const. 1821, art. 2, § 1; Am. 1826.

should not assess, the collector not receive, the militia not be called out, or the road master neglect his duty, there would be a deprivation of the elective franchise. The labor of a day on the highway or the payment of a petty commutation, the attendance of a day at a military parade, or the payment of a tax, however meritorious in themselves, certainly do not furnish such high evidences of public services in the agents, as to justify a monopoly of the elective franchise; and such I am persuaded, is not the wish of that respectable portion of the community. I therefore submit to your consideration, whether the constitution ought not to be so modified, as to render citizenship, full age, and competent residence, the only requisite qualifications.[4]

In thus improving our social institutions, it is pleasing to contemplate their benign influence on individual happiness and general prosperity; and to feel assured that a republican government may be transmitted in full purity and vigor to the remotest period of time. Even the troubled democracies of Greece and Italy, with all their deprecated vices, were preferable to the hateful tyrannies that surrounded them. The former were sometimes relieved by ennobling virtues; but the latter were always engulphed in hopeless debasement. Now that the representative system is well understood, and its capacity to unite liberty and power by federal combinations has been successfully tried, it will be our own fault if its duration prove not as permanent as its blessings are inestimable. In all governments, whether republican or monarchical, free or despotic, cupidity and ambition will address themselves to the sovereign authority for gratification. In free states, these applica-

[4] The Legislature of 1825 adopted a suffrage amendment for submission to the Legislature of 1826. It was again adopted by the latter Legislature, submitted to the people, and approved at the general election in 1826. The amendment abolished property qualifications except as to colored voters, and all adult male citizens who had resided in the state one year, and in the county six months were entitled to vote in the town or ward where they resided for all officers then or thereafter to be elected by the people.

tions will of course be made to the people who confer, either directly or indirectly, the honors and emoluments of office; and hence the excitements which arise from the operation of these passions, as well as from real differences of opinion. But with all these evils, republics still exhibit a decided superiority. Their agitations and attendant mischiefs, are more diffused and more feeble; and the people who feel their influence, have, generally speaking, no inducement to act wrong. It is their interest, as well as their duty, to select meritorious officers, and to establish a wholesome administration. The vices of faction, intrigue, falsehood, dissimulation, and corruption are rendered more intensely profligate by their concentration round the person of the monarch. His interest, and that of his favorites, too often become distinct from that of the community, and the general welfare is merged in personal gratifications. A republican government is certainly most congenial with the nature, most propitious to the welfare, and most conducive to the dignity of our species. Man becomes degraded in proportion as he loses the right of self government. Every effort ought, therefore, to be made to fortify our free institutions; and the great bulwark of security is to be found in education; the culture of the heart and the head; the diffusion of knowledge, piety, and morality. A virtuous and enlightened man can never submit to degradation; and a virtuous and enlightened people will never breathe in the atmosphere of slavery. Upon education we must therefore rely for the purity, the preservation, and the perpetuation of republican government. In this sacred cause, we cannot exercise too much liberality. It is identified with our best interests in this world, and with our best destinies in the world to come. Much indeed has been done, and we have only to cast our eyes over the state and rejoice in the harvest which it has already yielded. But much more remains, and ought to be done; — and the following state-

ment is exhibited with a view to animate you to greater exertions.

The number of children taught in our common schools during the last year exceeds 400,000, and is probably more than one fourth of our whole population. Ten thousand three hundred and eighty-three have been instructed in the free and charity schools in the city of New York, a number by no means proportioned to the wants of its population. The students in the incorporated academies amount to about 2,683, and in the colleges, to 755.

The fund for the common schools may be stated at upwards of 1,739,000 dollars, and its annual income at 98,000 dollars; to which may be added the interest on the future sales of lands, and on the disposal of escheated property; the proceeds of which latter item may be added to the capital.

However imposing this fund may appear, it is sufficiently obvious that it ought to be augmented. This state is capable of supporting fourteen millions of inhabitants. This appropriation will therefore soon be found far behind the progress of population, and the requisitions for instruction. Deeply impressed with the momentous nature of this department of our social policy to the cardinal interests of the state, I cannot withhold one important fact derived from past experience. Of the many thousands who have been instructed in our free schools in the city of New York, there is not a solitary instance known of any one having been convicted of crimes. In furtherance of this invaluable system, I recommend to your consideration the education of competent teachers on the monitorial plan, its more general introduction, and the distribution of useful books.

While our primary schools cannot be too numerous, our highest seminaries ought to be very limited in number. The creation of a college imposes the duty of endowing it. We have now four colleges for literary and scientific in-

struction, and two for medical education. They are all under the superintendence of highly gifted and enlightened men, and are eminently entitled to your liberal patronage. But until the government shall see fit to augment the funds of existing institutions to the full extent of their wants, I am persuaded that there ought to be no increase; and not even then, unless peremptorily required by the exigencies of education. Perhaps, indeed, in a case of so much importance, the authority of the regents of the university ought to be only recommendatory; and the incorporating power exclusively vested in the legislature, as a more safe depository than a single body, as the source from whence munificent endowments must emanate, and as most conformable to the spirit, if not to the letter, of the constitution.

Our institutions for the promotion of knowledge, are numerous, useful, and deserving of liberal encouragement. In various cities and villages, societies for the cultivation of natural science and philosophy, of antiquarian and historical research, and of general knowledge, have been founded; and are calculated to develop our resources, to accumulate useful facts, and to advance the great interests of society. In the promotion of medical knowledge, so essential to the preservation of health and life, the colleges of physicians and surgeons have continued their career of distinguished usefulness. Some of the county medical societies are entitled to great praise for simultaneous efforts. For all these institutions, your fostering care is earnestly solicited.

Added to these, the State Medical Society, which has been in beneficial operation for the last eighteen years, and which assembles every year at the seat of government, would be enabled by a small annual appropriation, to realize, to the most valuable extent, the high expectations which are so justly entertained of its disposition, and ability to extend the benefits of the healing art.

The great object of a good government is to secure the greatest happiness of the greatest number under its care. For this purpose, those arts and pursuits which minister to the sustenance and comfort of man, elevate his character, and excite his virtues and talents into activity, must be cherished with a solicitude proportioned to the importance of the end to be attained, and to the means of accomplishment. Four-fifths of our population are cultivators of the soil; on agriculture we must depend as the main source of our welfare. Its natural connection with manufactures, trade, commerce, navigation, and the useful arts, is well understood; and the united influence of these great departments of human industry constitutes the wealth, the power, and the prosperity of nations.

An act was passed in 1819 for the encouragement of agriculture which will expire during the present session. This state possesses every physical advantage for a great system of agriculture — a fertile and various soil; little waste land; easy, cheap and rapid means of transportation; great markets at home and contiguity to the ocean, that opens to us the markets of the world. These are some of the features that strike us at the slightest glance. And must it not be admitted that agriculture, either as a science or an art, is far from being cultivated with that ardent and successful spirit due to its importance? The most profitable mode of preparing the soil; the most economical and fertilizing applications; the most expedient rotation of crops; the various kinds of grain, plants, fruits, and trees best adapted to our soil and climate; the domestic animals most productive of solid advantage; the best system of plantation to supply the consumption of timber and fuel; — all these and similar subjects open a field of inquiry and research of momentous interest, and demand the animating and invigorating encouragement of the state. We have an intercourse with every region of the globe, and can easily procure seed, plants, animals, and labor-saving machines;

and we can hold such communion with the scientific associations of Europe connected with the various branches of husbandry, as will be productive of the most useful results.

The experiment instituted for the encouragement of agriculture, although but of short duration, laboring under much opposition, and conducted, in some cases, injudiciously, has been generally useful, and in some counties has been eminently successful. I submit therefore to you to determine, whether it would not be wise to continue this system under such modifications as you may deem advisable; and I do this under a full persuasion that you will never overlook any measure conducive to the prosperity of so cardinal an interest, and connected with the honor of the state.[5]

As horticulture is an important department of agriculture, I have great pleasure in informing you, that the incorporated Horticultural Society, established for some years in the city of New York, has been productive of great good, by increasing and improving our fruit and esculent vegetables. Another association has also been formed, and as these laudable institutions have recently established an union, I anticipate still greater benefits from their consolidated efforts. Founded upon the plan of the great Horticultural Society of London, and blending the contributions of experience with the researches of philosophy, they deserve the most liberal encouragement.

As it is one of the chief objects of a good government to cultivate the resources of a state, it becomes of primary

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[5] A committee of the Senate considered the subject of agriculture at some length, and presented a report recommending the establishment of an agricultural department, with an officer to be known as the Secretary of the Department of Agriculture, for the purpose of experiments, also for the purpose or obtaining information from other states and countries relative to agricultural matters, but the committee thought that public sentiment would not warrant the state in embarking in the proposed plan for an agricultural farm in connection with an agricultural seminary. A bill was introduced, but not passed.

importance to know with accuracy what constitutes those resources. The wisest states have pursued a defective policy in this respect, by neglecting to ascertain their own powers and faculties. Statistical surveys will easily accomplish this desirable object, let in a flood of light on the science of political philosophy, and open a wide field for the most useful practical operations. By the constitution, a census is to take place during the present year.[c] Important statistical inquiries may be blended with this object, which will evolve many momentous facts, and diminish the labor and expense of the general survey. Periodical returns of marriages, births and deaths, would greatly enhance the value of this information.[6]

The useful arts, connected as they are with the comforts and conveniences of life, deserve at all times the fostering care of government. In a community where labor is high and in constant demand — where the genius of the people is prolific in inventions of vast value, and where every new discovery that diminishes manual labor becomes of immediate consequence, it seems wise to hold forth such rewards as may stimulate ingenuity and indemnify expense. The national government, under existing laws, can do but little; and even when letters patent are granted, their validity is frequently drawn into question, with all the expense and vexation of incidental litigation. Would it not be sound policy to reward with liberality the authors of such inventions as produce a saving of labor in agriculture and mechanical pursuits, and improve the quality and augment the quantity of our products and fabrics? It is perceived with much satisfaction, that the encouragement already dis-

[c] Const. 1821, art. 1, § 6.

[6] Chapter 100, passed April 8, provided for taking a census in 1825, and at the end of each decennial period thereafter, including the whole number of inhabitants according to sexes, also the number of persons of military age, aliens, and colored voters. The law also required the marshals to procure statistical information on a great variety of subjects.

pensed has had the most propitious influence, in every direction, on the advancement of household and domestic manufactures. Many articles of exquisite workmanship have been presented at our fairs and exhibitions, greatly creditable to those who furnished, and to those who encouraged them.

The Mechanic and Scientific Institution of New York has been established for the purpose of diffusing the benefits of science throughout the various mechanical professions, by means of lectures, apparatus, models, books and public exhibitions of works of ingenuity, skill and industry. The usefulness of this institution would be greatly enhanced by the erection of an edifice adequate for its purposes; and it is believed that an appropriate site may be concurrently granted by the state and the city of New York, without inconvenience to either, from contiguous property in that city belonging to both, and now unoccupied. As this is the first organized school of the kind in the world, and is destined to increase the skill and elevate the character, of our mechanic interest, by applying philosophy to the arts, and imparting the benefits of science to that most useful body of our fellow citizens, its claims upon the public bounty will not escape your favorable attention.

The Erie Canal (which is the longest in the world, and which, in conjunction with the Champlain Canal, and the contemplated communications with Lake Ontario and the minor lakes, will produce the most extensive and important inland navigation ever witnessed,) would have been finished last season, had it not been for the intervention of unexpected impediments. It is however so near to its completion, as to render it necessary to form a permanent system for the preservation of the canals, for the collection of the revenue, for the extinguishment of the debt, and for a vigilant superintendence both of their particular concerns and of their general interests. A plan ought to be adopted, combining economy with efficiency, and having regard to

future as well as present operations. I consider these works as but the first in a series of great undertakings. We must, however, pursue our objects with prudence as well as with energy, in every stage of our progress, looking for support in the wisdom and patriotism of the people. And it is a source of high felicitation to know, that the debt may be speedily satisfied without resorting to taxation, without discontinuing our efforts for similar improvements, and without staying the dispensing hand of government in favor of the great departments of education, literature and science, or the cardinal interests of productive industry.[7]

A board for the promotion of internal improvements, composed of well informed citizens, ought to be constituted, with authority to consider and report on all subjects relative to the establishment of communications by land and water, by roads, railways, canals, bridges, and water courses, and with a general superintending power over their construction. All applications and proposals on such subjects, would of course receive full consideration of the board, before they were accepted by the legislature; and would be carried into execution in accordance with the exigency of the case, the importance of the object, and the ability of the state. The field of operation is immense, and the harvest of honor and profit is unbounded; and if our resources are wisely applied and forcibly directed, all proper demands for important avenues of communication, may be answered in due time, and in ample extent.[8]

The primary design of our artificial navigation, is to open

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[7] By chapter 275, passed April 20, the canal commissioners were authorized to lease surplus waters of the Erie and Champlain canals. Chapter 277, passed April 20, authorized the construction of a canal from the western terminus of the Erie canal to Black Rock. Chapter 292 authorized the canal commissioners to borrow an additional sum for canal purposes. Chapter 236 authorized the survey of several canal routes.

[8] This suggestion concerning a board of public improvements was approved by a Senate committee, and a bill was introduced to establish such a board, but it was not passed.

a route by canals between the Atlantic ocean and the great lakes. The Erie and Champlain canals will, in a great measure, accomplish this object; but it will not be fully realized until the waters of lake Ontario shall be connected with the Erie canal and with lake Champlain. The importance of this design will be duly appreciated, when it is understood that the lake coast, not only of this state but of the United States, is more extensive than the sea coast.

The next leading object, is to unite the minor lakes and the secondary rivers with the canals; to form a junction between important rivers; and to produce such a connection between the bays on the sea coast, as will ensure the safety of our boat navigation in time of peace against the tempests of the ocean, and in time of war against the depredations of an enemy.

A canal between the St. Lawrence river and Lake Champlain would be attended with important benefits, by opening a valuable market within our own territory, and by affording an equivalent for the privation of a free use of that river. Duties have been imposed on our productions sent to Canada; and it is believed that the British government have declined a negotiation respecting the free navigation of the St. Lawrence. That we have, by the law of nations, a right of free transit to the ocean through that river, I entertain no doubt; and I am inclined to believe that we are entitled to an entrepot, or place of safe deposit for our commodities destined to the ocean through that channel.

Although these points are not properly within the sphere of our deliberations, yet they ought to be known, because they affect the rights and interests of our fellow citizens; and in knowing them, we may apply for redress to the constitutional organ. How far it may be advisable for the United States, in case a satisfactory arrangement cannot be made, to impose countervailing duties on the products

of Canada, on their transit through our territory down the St. Lawrence, is a subject on which the national government will undoubtedly bestow wise consideration.

The contemplated canal between that river and lake Champlain, would relieve the northern inhabitants of this state from the embarrassments of a foreign market. A survey of this route has recently been made, under the authority of the state, and the only formidable impediment is an intervening elevation of upwards of nine hundred feet. This may perhaps be surmounted by locks or inclined planes, and there is said to be an abundance of water on the summit level. Where this ridge passes into the British dominions, there is an abrupt descent, and the level country below presents an easy passage for a canal. Perhaps an adequate portion of this territory may be obtained by negotiation, either by conceding our alleged exclusive right on a certain part of the St. Lawrence, or by making some arrangements in relation to the disputed territory on the northeast angle of the United States.[9] But at all events, and under any circumstances, a communication between the Erie canal and Lake Ontario, by the way of Oswego, ought to receive your decided countenance and to be made as soon as practicable. It will greatly augment our revenue, and open profitable markets to our industrious and enterprising citizens residing within the reach of that lake and its tributary waters. The provision heretofore made in this

[9] In the Assembly a resolution was introduced requesting Congress to impose a transit duty on Canadian products transported over that part of the St. Lawrence River between Barnhart's Island, and the American shore. The resolution was referred to a committee, which presented a long report, reciting the early free use of the St. Lawrence and the act of the British Parliament of 1822, imposing heavy and in some instances prohibitive duties on American goods imported into Montreal and Quebec, shipments being usually made by the St. Lawrence. The committee recommended the adoption of a resolution which included a provision that the proceeds from such transit duties be used in part for the construction of a canal within this State from the St. Lawrence to Lake Champlain. The resolution was not adopted.

respect, is neither adequate as to funds, nor as to prompt execution.[10]

To unite, in the most accommodating manner, the waters of the Seneca, Cayuga and Canandaigua lakes, and such of the secondary lakes as may be deemed expedient, with the Erie canal, is also an object of great importance. A connection too is desirable between the Delaware and the Hudson; between the upper waters of the Allegany, Susquehannah and Genesee rivers; between the Erie canal and the Susquehannah, along the valley of the Chenango river; between the Susquehannah and the Seneca lake; between the Erie canal at Buffalo and the Allegany river, at its confluence with Conewango Creek; between Black River and the Erie canal; and between Gravesend Bay, Jamaica Bay, Great South Bay, and Southampton Bay, and across Canoe Place to Southhold Bay on Long Island.[11] Other eligible communications might be indicated, but these are sufficient to evince the expediency of constituting a board with general powers in relation to internal improvements.

All these works must emanate from the authority of the state; but many of them will doubtless be undertaken without any demand on the treasury, in consequence of encouraging grants. Of this nature is the connection proposed to be made by a company between the Delaware and Hudson—a project highly deserving of public countenance.[12] The canal on the south side of Long Island would perhaps be constructed under a similar grant. Considering that those sections of the state are necessarily excluded from an immediate participation in the benefits of the canals already

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[10] Further provision for the construction of the Oswego Canal was made by chapter 272, passed April 20, which authorized the commissioners of the canal fund to borrow an additional sum for this purpose.

[11] Surveys of a large number of canal routes were ordered by chapter 236, passed April 20, following substantially the suggestions contained in the message. There were also several special canal acts.

[12] Further legislation in aid of the Delaware and Hudson Canal Company was contained in chapter 220, passed April 20.

made, I derive a peculiar gratification from the liberality manifested by the legislature in the one case, and shall be happy to see it extended to the other.[13]

The proposed connection between the Seneca lake and the Chemung or Tioga branch of the Susquehannah, will not exceed twenty miles; and that lake is open for navigation during the whole year.[14] This canal will open our salt and gypsum to the extensive region connected with the Susquehannah, and a numerous body of our citizens will find a market for their productions in Philadelphia and Baltimore, as well as in New York. This multiplication of markets will be beneficial to the agricultural interest; is in consonance with the dictates of sound policy, and can only be opposed by sectional and monopolizing views. In addition to this, it may be stated, that there is an inexhaustible quantity of bituminous coal on the head waters of the Tioga river, which is now sold at the mines for two cents per bushel, and which can be transported on flats to Newtown in Tioga county. It is represented to be of a superior quality, and similar to the Liverpool coal of commerce and it is supposed to occupy the extensive region from Wheeling to that part of the state near the head of the Seneca lake; and should the proposed communication be made, it may be transported to Albany by water.

Some canals will undoubtedly be accomplished by individual enterprise; some will require partial assistance, and others must depend entirely on public munificence. But all can, with proper exertion, be executed in due time, and in accordance with the growth of the state, the exigencies of society, and the inevitable evolution of our resources.

The Erie canal, besides completion at its western termi-

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[13] Chapter 236 provided for the survey of a canal from Gravesend Bay by specified routes to Southold Bay on Long Island.

[14] Chapter 225, passed April 20, incorporated the Delaware and Susquehannah Navigation Company with power to construct a canal or railway between the Delaware and Susquehannah Rivers at points within the state near the Pennsylvania line.

nation, will require in time some important additions. These will consist in double locks and towing paths, to accelerate the passage of the boats. When new bridges shall be required, a much greater elevation ought to be given to the road bridges, and the farm bridges ought to be formed on a retractile plan.

The Champlain canal enters the Hudson at Fort Edward, and the navigation is continued for several miles down that river. The comparative advantages of natural and artificial navigation, are thus fairly tested and fully contrasted; and the delay, expense and vexation of the former channel of conveyance, are found so harrassing, that it has become essential to substitute a canal; and initiatory proceedings have been had for that purpose under the sanction of the legislature, which will, I trust, be consummated immediately. The Champlain canal opens a vast expanse for inland trade and public accommodation. Its revenue, when compared with that of the Erie canal, will be at least in the ratio of its extent. The region which borders on lake Champlain abounds with rich iron ore, convertible into the best iron, which with excellent steel, is now manufactured successfully by enterprising individuals. Calcareous substances of all and the best kinds, from marble to building stone, lumber, the products of the dairy, of the soil and of manufactures, are also in great plenty; in return for which that region has occasion for salt, gypsum and various commercial accommodations.

It is also necessary that prompt and effectual provision be made, to remedy the embarrassments attending sloop navigation on the upper parts of the Hudson. Different plans have been proposed for the attainment of this important object; and among others, the improvement of the natural navigation, by removing the present obstructions, by joining different islands, and increasing the velocity of the current. It is now in a good measure ascertained to be most profitable, to make transhipments from canal boats

to river vessels. The importance of this measure is, therefore, identified with the well being of our artificial, as well as of our natural navigation. And I am persuaded that you will not shrink from these operations on account of the presumed expense. In all judicious undertakings of this kind, faithfully conducted, there will be an excess of benefit. Money applied at home in useful improvements, is to be regarded as an instrument of circulation, not a privation of wealth, nor an extinguishment of capital.

When private property is appropriated to public uses the compensation to the owner ought to be prompt and ample. There is reason to apprehend that this has not been done in many cases connected with the canals, and that great complaints have been made, and considerable losses sustained in consequence of such omission. As the law now stands, appraisements for such appropriations must be made by two of the acting canal commissioners, if the supreme court should set any aside as they are authorized to do, on just and equitable principles, it seems reasonable and proper that the new assessments under these circumstances, should be submitted to a tribunal which had not passed upon the question.[15] I recommend the whole of this subject to your early attention.

The debt due on account of the canals, and the subsidiary works, is $7,467,770.99, of which $4,524,270.99, bear interest of five per cent. and the residue an interest of six per cent. making an aggregate annual interest of $375,823.55. The revenue from the tolls the present year, will exceed $310,000 —and the duties on salt $100,000, which with the other sources of income belonging to the canal fund, will, in all probability, produce an excess of revenue above the inter-

[15] Chapter 275, passed April 20, authorized the Governor and Senate to appoint two persons, who with one of the canal commissioners were to appraise damages connected with the construction of the Erie and Champlain canals. An appeal from an award made by the appraisers might be taken to the Board of Canal Commissioners, whose decision was to be final and conclusive.

est of the canal debt, of near $300,000. Should any discrepance appear between this statement and the annual report of the comptroller, it will be only apparent, his having reference to the fiscal, and this to the natural year.

It is believed that next year the revenue will be nearly doubled, if the Erie canal arrives to the lake in due season, and its progressive expansion will be commensurate with the prosperity of the state, and the growth of our country. From these data, a just estimate may be made of the rapid operation of a judicious sinking fund in extinguishing the whole debt, and of the prospective fiscal resources of the state.

It is estimated that 10,000 boats have passed at the junction of the Erie and Champlain canals within the last season. Boats with commodities proceed at the rate of 55 miles in 24 hours; and boats with passengers near 100 miles in the same time. As late as the 15th of December, a boat laden with merchandise arrived at Utica from Albany.

Internal trade is most flourishing when its profits are small, and its returns quick. And this desirable effect is produced by the brisk circulation of commodities through canals. An important recommendation of this communication is the facility which it affords to emigration and change of habitation; its conveyance of bulky articles which are forbidden to land transportation; the cheapness, safety, and certainty of traveling, and its consequent increase. Hence, the promotion of rapid settlement and concentrated population. All these propitious circumstances go to establish the permanency and magnitude of the income to be derived from our canals, and to demonstrate the superior profit of judicious investments in them. The advantages of a condensed over a scattered population, proceed from furnishing great markets for sale and purchase; from extending the operations of ingenuity and skill; from expanding the sphere of employment by subdividing the exertions, and augmenting the productive power of labor, and by concen-

trating great capitals subservient to all the purposes of life. In producing extensive markets, in communicating the benefits of a dense to a spare population, and in destroying the inconveniences of distance, canals may be emphatically designated as the great labor saving machines of internal commerce.

For almost all useful purposes, the city of Detroit, will, on the completion of the Erie Canal, be brought within a hundred miles of the city of Albany. Already have we witnessed the creative power of these communications, in the flourishing villages which have sprung up or been extended; in the increase of our towns; and, above all, in the prosperity of the city of New York. If, as is said, upwards of three thousand houses have been built in that city during the last year, it is highly probable that in fifteen years its population will be doubled, and that in less than thirty years it will be the third city in point of numbers in the civilized world, and the second, if not the first, in commerce. Nor is there any danger of a reaction. After cities reach a certain elevation of opulence and prosperity, they appear to possess a self-multiplying, self-augmenting power. But independently of this consideration, the external as well as the internal causes of the opulence and extent of New York will continue in full operation, and with additional power, and in proportion as its supplies increase, it will furnish augmented means of consumption at home, and of attraction to customers from abroad. How emphatically then does it behove us, in the contemplation and enjoyment of these abundant blessings, to remember that we derive them all from the Great Fountain of Benevolence!

I cannot refrain, upon this occasion, from congratulating you and our country on the propitious spirit which is generally diffused through the other states, in favor of internal improvements. The state of Ohio has now under consideration, a stupendous project for uniting the Ohio river with

Lake Erie, which may justly be considered a prolongation or continuance of our Erie canal, and which will connect the Hudson with the Mississippi, and convert a most important portion of the United States into one vast island. I shall welcome the commencement, and hail the consummation of that work, as among the most auspicious events in our history. It will open to our trade the luxuriant valley of the Mississippi, and its auxiliary rivers. It will immeasurably enhance the value and usefulness of our works, concentrate the commerce of the east and the west in our great emporium, and bind the union together by indissoluble ties. The state of Ohio is distinguished for fertility of soil, benignity of climate, moral power, and prospective resources. The revenue from the canal will pay, in a reasonable time, the interest of the sum expended for its completion, and form a large surplus applicable to the speedy extinguishment of the debt; and there can be no doubt, but that the necessary funds may be procured in this state, on easy and satisfactory terms.

I cannot pass over in silence, the attempt which has been recently made to bring the boats navigating our canals, within the operation of the statutes for regulating the coasting trade of the United States, by requiring from such boats enrolment and license, and the payment of tonnage duties. The canals are the property of the state, are within the jurisdiction of the state, have been constructed by the state, and can be destroyed by the state. They have been made at its expense, after the general government had refused all participation and assistance. It cannot well be perceived how the regulation of commerce "with foreign nations, and among the several states, or with the Indian tribes," can authorize an interference with vessels prosecuting an inland trade, through artificial channels. The coasting trade is entirely distinct from a trade through our canals, which no state in the union, nor the general government itself, has a right to enjoy, without our consent. The

consequences of such assumptions would be, if carried into effect, to annihilate our revenue arising from tolls, to produce the most oppressive measures, to destroy the whole system of internal improvements, and to prostrate the authority of the state governments.

A just exposition of the laws of the United States, cannot authorize their application to such cases. But if a different interpretation should prevail, then it becomes a very serious question indeed, whether the state can enforce its laws imposing tolls. The supreme court of the United States has solemnly adjudged, that a coasting license from a collector is a grant of the right of navigation. If so, and that right being derived from a law of congress, it will be contended that it cannot be prohibited nor controlled by any state law; the right to be complete, must be enjoyed without restraint. The state cannot demand a toll, as the price of the enjoyment of such a right, if it has not the power to prohibit such enjoyment altogether.

It may be further remarked, that the power to regulate commerce, among the states, under which the act regulating the coasting trade was passed, is held, by that high tribunal, to be exclusively in congress. If so, and if that act, or any other act, which congress may pass, under that power, can be applied to the canals, it would follow, as a consequence, that our laws imposing tolls, are void from the beginning. The state has no power to adopt them; and in this view of the subject, it would seem to be immaterial whether any license be taken out under the act of congress.

The supreme court has also declared, that the power to regulate commerce includes a power to regulate navigation, as one means of carrying on commerce. The same remark may be made, with equal force, concerning any kind of transportation, whether by land or water, the power to regulate commerce applying to the one as well as to the other. If congress can declare, that a boat passing between different parts of the same district, within the same

state, shall take a license, why can it not direct that a wagon shall take one, under similar circumstances? When we shall have arrived at this point, we shall begin to have some adequate notion of the extent to which this claim may be carried.

I shall say no more on this subject at this time. I will not entertain a doubt but that the national government will command the abandonment of a claim so unfounded and pernicious; and I am persuaded that it has been preferred without due reflection, and without instructions from superior authority. But if this course shall not be pursued, it will then be your duty to take that stand which the rights and safety of the people imperiously demand.[16]

The considerations which grow out of this occasion, and the complaints which have been made in different states about alleged encroachments of the national government on their constitutional powers, point to the most formidable dangers that can menace the stability of the union and the welfare of our country. Without a general government, we shall neither have union at home nor respect abroad. We shall be arrayed into separate confederacies, or exist as insulated states, maintaining large standing armies, wasting our resources in intestine wars, the dupes of foreign intrigue, and the victims of civil discord. Without state authorities, there can be no civil liberty and no good government; for it is utterly impossible that so extensive a country can be bound together, unless as a confederation or a military despotism. Every true friend of America will strive to maintain these respective authorities in full purity and vigor, without detracting from the powers of

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[16] The maritime jurisdiction of the United States over the Erie canal was declared and sustained in The Robert W. Parsons (1903), 191 U. S. 20. That decision made the Erie canal navigable water under the maritime law, and held that a lien for repairs on a canal boat was enforcible in the admiralty courts, and not in the state court. See note relating to canal tonnage, *ante*, p. 48.

the one to add to those of the other, nor extending the faculties of either beyond their legitimate dimensions. Each possesses a portion of the delegated authority of the people, and each is supreme within the sphere of its constitutional powers. The apprehensions entertained by some of our distinguished statesmen at the formation of the national constitution, have entirely failed; and instead of the predominance of a controlling power in the states, the centripetal force of the general government has had perhaps too great a preponderance. The offices of the latter exceed those of the former, in rank, power, number and emolument; its patronage is commensurate with its superior resources; and it touches, in its relations and ramifications, every chord of ambition; presents the most spacious theatre for the display of great talents, and for the gratification of lofty aspirations. It also possesses a decided advantage over the state governments in the arrangement of its judicial authority. In all controversies relative to the due exercise of their powers, this department of the national government is a tribunal of dernier resort, without any amenability to the people or the states, with a compensation that cannot be diminished, under a tenure that will endure for life, and with no other responsibility than liability to impeachment for high crimes and misdemeanors, under which any decisions, however erroneous, can never be classed, because an error of judgment can never be adjudged a crime.

Natural justice prescribes that no man should be a judge in his own cause, and that between contending sovereignties neither should pronounce the law of the case. A new tribunal ought to be constituted, to decide upon the powers of the national and state governments, and to keep them within legitimate boundaries. I know of none that can be formed with a character so imposing, with a responsibility so imperative and with a position so dignified, as the senate of the United States. Composed of the most distinguished

and talented men of the several states, its decisions would be formed with integrity and ability, and received with respectful acquiescence. As a co-ordinate branch of congress, and as a component part of the executive power, it would be a safe guardian of the just authority of the national government; and as a representation of the states with a periodical change of members, it would be their natural and efficient protector against unconstitutional invasions. In these suggestions, I have not the most distant intention of violating the habitual respect which I entertain for the supreme judiciary of the union.

A judicious policy will dispense, as far as possible, an equal participation of the benefits of cheap and rapid communication. Those regions which are more distant from our navigable establishments ought to enjoy equivalent facilities by roads and bridges. The southern tier of counties, commencing with Chautauqua, and extending eastward, come generally under this description. In all cases of this kind, roads ought to be made from the interior country to the market towns on the Hudson and other navigable waters; to the canals; to the parallel and great lakes; and to all other places where the conveniences of transportation are effected. It is of great consequence to construct a state road from some point on the Hudson river to the head of the Cayuga lake, nearly central between the line of the Erie Canal on the one side, and the Pennsylvania line on the other. Such an avenue, of requisite solidity, of adequate width, and smooth and even surface, would afford great and valuable facilities. The distance would be about 150 miles, and each end of the road would furnish good markets to an important region of the state, now remote and in a great degree sequestered. Whenever this is the case, trade is in some degree managed by barter or exchange, as a substitute for circulating medium. The impositions and errors that necessarily result from nego-

tiations transacted without a certain standard of value, are injurious to morals and social harmony. It ought not to be forgotten, that during four months of the year, when our navigation is obstructed by ice, it is peculiarly requisite that our highways should be maintained in good condition.[17]

A report on the Cayuga marshes will be made to you by one of our most able civil engineers. And if it should prove favorable to the practicability of the contemplated enterprise, the obvious utility will be recognized in promoting the public health, and in reclaiming a considerable portion of our most fertile lands, now unfit for cultivation.[18]

I beg leave to call your attention to our salt works in Onondaga county. By proper regulation and management, the whole country may be supplied with this indispensable article, at the cheapest rate; and a revenue of half a million of dollars may, in a few years, accrue to the state. A

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[17] An Assembly committee submitted a report on the 16th of March, recommending that a state road be constructed from some point on the Hudson River through the southern part of the state to Lake Erie in the county of Chautauqua. The committee also said that the proposed road, parallel to, and coextensive with the Erie canal, would be opening another great avenue of communication with the west. "And during those months of the year, when the canal is impassable, it would become the great route and thoroughfare of travel, and of transportation to and from the northern parts of Ohio, Indiana, and Michigan, and the city of New York, and also the eastern states of the Union." The report contains much information, historical and general, relative to internal communications and the advantages to be derived from the construction of state roads and other means of internal communication.

The result of this discussion was the enactment of chapter 279, passed April 20, which authorized the Governor and Senate to appoint three state road commissioners who were authorized to explore and survey the two routes mentioned in the committee's report.

[18] Chapter 208, passed April 18, provided for draining the Cayuga marshes and swamp lands, in the valley of the Seneca River, and about the Cayuga lake.

board of commissioners, instituted to make the necessary investigations, and to recommend the most eligible system, is a measure well worthy of your attention.[19]

The erection of wharves, and other accommodations for trade, on our navigable lakes, will be promoted by investing the commissioners of the land office with the like powers in this case as in that of grants under the waters of navigable rivers to the proprietors of the adjacent lands.

I intended to submit to you some observations on our penitentiary system; but I understand that a board composed of intelligent men, have been charged by the legislature to consider this subject, and that their report will in due time be presented to you. I shall therefore only say, that a classification of offenders, separate dormitories, solitary confinement and steady labor, are essential to the success of the system, and that it may be so administered as to afford the means of its own support, without any expense to the state. Whenever the pardoning power has been extended too far, whether in consequence of recommendations proceeding from the most benevolent feelings in some instances, or from the crowded state of the prisons, the usefulness of the penitentiary system has been impaired. It is your duty to provide the means for executing the laws, and it is my duty to see them executed. And I shall certainly exercise the prerogative of mercy, with a view only to the legitimate objects of punishment, the reformation of offenders, and the prevention of crimes.[20]

A house of refuge, for the reformation of juvenile de-

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[19] Chapter 326, passed April 21, provided for the appointment by the Governor and Senate of a superintendent of salt springs, an inspector of salt, and an engineer of the pump works at Salina. The act contained numerous details concerning procedure and administration, and the manufacture and inspection of salt.

[20] Chapter 25, passed March 7, appointed commissioners for the purpose of building a new state prison in the first or second senate district, at a place to be located by the Commissioners; and they were also authorized to sell and dispose of the New York State Prison.

linquents has been established by a benevolent association in the city of New York. Its objects are to rescue them from destruction by disciplining them in virtuous and industrious habits; and a full statement of the views and concerns of this excellent institution, will, in due season, be made known to you. Of a kin to this establishment, and with a preventive as well as remedial tendency, is the Orphan Asylum in that city, under the auspices of females of distinguished benevolence. It takes under its protection children who have been left in an orphan-state, and trains them up in the paths of virtue and usefulness. The Lunatic Asylum has participated largely in the bounty of the state, is well managed, and may be justly classed among our most important charities. Another unfortunate description of human beings, the deaf and dumb, are committed to the instruction of a laudable institution, incorporated in the city of New York, which will apply to you for a renewal and modification of the statute passed in 1822, to promote the education of the indigent deaf and dumb within this state. That act provides for four pupils from each senatorial district, and authorizes their support from the state treasury. Twenty-seven are now in the school as state pupils; but there are between thirty and forty applicants who cannot be received from districts that have the prescribed complement, and vacant districts cannot be filled from other districts. It is desirable to augment the number to six from each district, and to allow vacancies to be supplied from other districts when there are no applicants.[21] A society for the same purpose, denominated the Central, was incorporated in 1823, and established in Canajoharie. Of its condition, I have no specific information. When the census is taken, it will be useful to have an enumeration of the deaf and dumb, designating sexes, ages and

[21] The Governor's suggestions as to the deaf and dumb were adopted, and included in chapter 166, passed April 15, which amended the act of 1822, relative to the instruction of indigent deaf and dumb persons.

circumstances. Information of their ages is desirable, because the only docile objects are those between ten and twenty-five years of age; and a knowledge of their means of support is necessary, in order to ascertain the needful extent of public charity. This has, I believe, been done in some states. In Ohio, the number was found to be 428.

An enumeration of insane persons should also be taken, arranging them under the heads of criminals, paupers, and in good circumstances. The criminal lunatics in Great Britain are composed of those who are committed under the statute against disorderly persons, and of another class, for which I believe, no provision has been made in our code; and which ought to be attended to. If on the trial of a person, charged with treason, murder or felony, in that country, a defense of insanity is set up, and if the jury acquit the prisoner on that ground, the court may, notwithstanding, continue him in confinement.[22]

Too much praise cannot be ascribed to the founders and patrons of these and other useful charities. If there be vices, which inflict their own punishment, there are also virtues which dispense their own reward, and receive the veneration of the present age, the benediction of posterity, and the smiles of approving Heaven.

Judging from the reports of the Adjutant-General and Commissary General, made at the last session, I have reason to believe that the state of our militia and arsenals is flourishing. The importance of these objects entitles them to cordial and vigilant cultivation. A respectable portion of our fellow-citizens, recommended to our favorable notice by their virtuous lives, exemplary habits of industry and zealous co-operation in all benevolent undertakings, are conscientiously opposed to bearing arms, and to the pay-

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[22] The census act, chapter 100, provided for obtaining information as to the number of deaf and dumb and insane persons in the state in accordance with the Governor's suggestion.

ment of fines imposed for non-attendance in the militia. A complete relief can only be effected by the interposition of congress, or by an alteration of the constitution;[d] and that it ought to be granted, I entertain no doubt. A sufficient equivalent is already rendered to the state, by the exclusive support of their own poor, besides their full participation in the maintenance of the poor in general. In this enlightened age, when the rights of man are fully understood and practically asserted, it is surely not compatible with the tolerant and liberal spirit of the times, to wound the consciences of our unoffending fellow men. At all events it lies in your power to guard against abuses in the penal inflictions, which it is believed, have in some instances, been carried to oppressive lengths.

During your session, you will be called upon to elect a senator of the United States. I need not enforce the considerations which will naturally occur to you on this interesting occasion, nor urge the expediency of selecting a person of great experience in public affairs, of approved capacity, of unquestionable fidelity and of distinguished public services. Such a representative is alone worthy of the state, and is required by the interests of the union.[23]

The reception of General La Fayette, has been equally honorable to him and to the nation. It has illustrated the good feelings of the people, rescued free governments from the standing reproach and inculcated a great moral lesson on the world. The merits of this illustrious man are em-

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[d] Const. 1821, art. 7, § 5.

[23] A senator was not chosen at this session. Consequently at the special session which opened on the 4th of March, 1825, Martin Van Buren was the only senator from New York. The vacancy caused by the expiration of Rufus King's term was not filled until the 14th of January, 1826, at which time Nathan Sanford was elected. On the 1st of August, 1823, he was appointed chancellor to succeed James Kent, who retired from office in July by reason of the age limit in the constitution. Mr. Sanford resigned the office of chancellor after his nomination as United States senator.

bodied in the leading events of his well spent life, and recorded in the faithful pages of history. Although one of the privileged orders of France, he embarked his fortune, his character, and his life in the cause of our republic, and in the very crisis of its fate. During the revolutions which have subsequently agitated Europe, he has been uniformly the intrepid, the faithful friend of freedom, neither turning to the right nor to the left, but marching onward in the great cause of principle, defying the denunciations of jacobins, and encountering the frowns of tyrants.

During his short residence in this state, he was received by our chief magistrate, by our municipal authorities, and by the great body of the people with distinguished respect. His old companions in arms, the war-worn soldiers of the revolution, and the venerable patriots of the times that tried men's souls, gathered around their friend, and the generations that had sprung up in his absence hailed him, as the champion of liberty and the benefactor of the human race. It remains for the legislature to unite in the general voice, and to adopt measures suitable to the occasion, and worthy of the state. The recent demonstrations of national gratitude reflect honor on the source, and render justice to the object, and are cheering to the hearts of the American people.[24]

The most friendly feelings, I have reason to believe, exist between this state and the other members of the confederacy, which I hope will ever prevail, to the utter exclusion of sectional jealousies and geographical prejudices. Our controversies about jurisdiction and territory have been definitively settled with all, except the state of New Jersey; and seeing no reason why an amicable adjustment, on the most honorable terms, should not be effected, I earnestly recommend that provision be made for that purpose,

[24] See *post*, p. 110, for a note on La Fayette's visit.

in accordance with the law passed by that patriotic state, which I shall cause to be laid before you.[25]

The protection of our great commercial emporium from pestilential diseases is essential to the general welfare. I sincerely hope that the prejudices which have sometimes arrayed in contention with each other, country and city interests, will be forever dismissed as unworthy of the good sense and good feelings of the community, and that the prosperity of each will be considered the prosperity of both. Our quarantine laws ought to be executed with vigilance and energy, and such improvements adopted as will effectually guard against danger from abroad; for on any theory that has been suggested, a precautionary system is necessary, whether malignant or yellow fever is propagated by specific contagion, or introduced by the deleterious state of vessels and cargoes.[26]

The police of the city of New York is excellent in relation to crimes, but in reference to health it has no distinguished merit. Without good water there cannot be good health; and no effectual provision has been made for that object. It may be laid down as an incontrovertible truth, that no dense population can furnish from within its own limits, an adequate supply of this indispensable accommodation, with reference to quality and quantity. As there is nothing to prevent your favorable interposition,

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25 No act was passed relative to the New Jersey boundary. On the 21st of April, the day of adjournment, the Assembly tabled a resolution requesting the Governor to communicate to the executive of New Jersey, "that although this legislature is fully impressed with the amicable spirit and patriotic intentions of New Jersey in the proposition to appoint commissioners to settle the dispute as to the territorial limits of the respective states, yet being of the opinion, from previous agitations on this subject, that the mode proposed by New Jersey can result in no amicable arrangement, that this legislature do respectfully decline the proposition of appointing commissioners on their part for the object proposed."

26 Chapter 212, passed April 18, amended the act of 1823, relating to infectious and pestilential diseases, by exempting from its quarantine provisions vessels coming from Canton or Calcutta.

I trust that you will dispense it with a liberal hand to all laudable attempts, whether by the local government, by private associations, or by enterprising individuals, to furnish a sufficiency not only for all domestic purposes, but for public baths; for cleansing the streets, and for the general purification of the city.[27]

An annual law is generally passed, authorizing certain aliens, by name, to take, hold, and dispose of real estate, in like manner as natural born citizens. Such a provision is proper, and operates as an encouragement to wholesome emigration. But may not this object be more effectually and comprehensively attained by passing a general law, empowering, under certain restrictions, resident aliens to enjoy similar privileges.[28]

Our legal rate of interest for money was established at a remote period, and is one percent. higher than in some of the most flourishing states. Your attention to a suitable reduction, may be of great benefit to the public.[29]

The mercantile interests are greatly aggrieved by the law relative to merchants and factors, or agents, as recognized in England, transferred to this country, and incorporated in our judicial decisions. The parent case on this subject was laid down by Lord Chief Justice Lee, in 1742, and may be found under the head of Paterson vs. Tash, in the second volume of Strange's Reports. Although the facts of the case do not appear, and the adjudication itself

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27 The New York Water Works Company was incorporated by chapter 46, passed March 24, for the purpose of supplying the city with pure and wholesome water. The supply was to be procured outside the city.

28 By chapter 307, passed April 21, an alien who had declared his intention to become a citizen of the United States might take and hold real property in the same manner as a citizen.

29 A senate committee recommended a reduction of the rate of interest, but no bill was passed. In 1879, chapter 538, the rate of interest was reduced from seven to six per cent. after January 1, 1880. The act of 1879, chap. 538, was sustained in Morley v. Lake Shore & M. S. R. Co. (1892), 146 U. S. 162, aff'g (1884) 95 N. Y. 428, 667.

is exhibited in a suspicious shape, yet it has been implicitly and servilely adopted; and it is now considered as settled law, that if a factor pledges the goods of his principal, the person who has advanced money upon them, in ignorance of his being a factor, cannot hold the goods as a security for his advances. And another rule equally exceptionable has been established, namely, that the factor cannot bind his principal in cases in which the *bona fide* purchaser can have no means of discovering the extent of his authority, or the fact of his not being a principal. This law is different from that of France, Russia, Austria, Spain, the Hanse towns, Holland, and indeed of almost all Europe; and is found to be so pernicious in its operations in Great Britain, that a bill has passed the house of commons, and will probably become a law, conformable to the general sense of commercial countries. In mercantile arrangements, it frequently occurs that there are several advances made between the shipment and sale of commodities — by the foreign shipper or consignor to the foreign proprietor — by the consignee to the consignor, who is himself a factor — and by some of the capitalists to the factor, in consequence of a difficulty in finding a ready and advantageous sale. All these arrangements for the convenience of commerce are impeded, jeopardized, and frequently frustrated by the existing law; and our merchants are now placed in a most peculiar position. Laws operating injuriously on individuals and on commerce, and founded solely on British precedents, continue in force with us; while Great Britain has found the same laws so inconvenient and unwise, that her parliament has passed one statute, and is about to pass another, for correcting the evil.[30]

Our laws in relation to the estates of intestates and

[30] Chapter 179, passed April 16, 1830, was intended to afford protection to a consignee who had made advances to or for the benefit of the person in whose name goods were shipped.

testators are of similar origin, and operate in many cases injuriously on the claims of justice and the interests of society. Why should there not be a *pro rata* dispensation of payments to all *bona fide* creditors, without reference to specialties or other preferences, as now recognized? And might not salutary rules be adopted to enforce the prompt settlement of estates, and to sanction the probate of wills, without encountering the expense and delay, which are now just subjects of complaint? Indeed, the whole system of our jurisprudence requires revisal, arrangement, and correction. A complete code founded on the salutary principles of the common law, adapted to the interests of commerce and the useful arts, the state of society and the nature of our government, and embracing those improvements which are enjoined by enlightened experience, would be a public blessing. It would free our laws from uncertainty, elevate a liberal and honorable profession, and utterly destroy judicial legislation, which is fundamentally at war with the genius of representative government.

You will excuse me from adverting to a subject of a delicate nature, but which is so very important that I cannot, consistently with my sense of duty, pass it over in silence. The mixture of incongruous subjects in the same bill, has always been considered an unsound mode of legislation. Every provision ought to stand on its own merits, and it should consequently be unconnected with irrelevant matter. On the last reading the final question is taken on the whole bill. When compounded of various matters, it may be improperly forced into a law by the variety and extension of the interests which it propitiates. At one time this mode of heterogeneous legislation was carried so far that the council of revision, during the administration of my venerable relative, objected to a bill on that account. The practice was partially discontinued for a time; but it has since been pursued in a bill necessary to be passed at the close of every session, called a supply bill, and which sometimes contains provisions entirely misplaced.

But this procedure is not so pernicious as a novel practice, which has been introduced since the adoption of the present constitution, in relation to certain bills which cannot become laws without the sanction of two-thirds of each branch of the legislature.[e] It was formerly laid down as a sound rule of legislation, that after a bill was rejected, it should not be re-introduced the same session; and that after one reconsideration, a proposition should be viewed as at its termination. The object of these regulations was, to guard against an unnecessary waste of time, to promote economy, and to prevent the introduction of practices incompatible with purity and good order, and injurious to the harmony of the legislature. What is well considered, does not require frequent reconsideration. The fair object of the latter is, to introduce new light, and to present impressive facts and considerations, which had not been suggested, or known in due season.

For the two last sessions of the legislature, if I am rightly informed, it has been customary, after the rejection of a bill on the third reading, for the want of the requisite two thirds of the members to move for, and obtain, frequent reconsiderations. By this means, a number of bills of the same kind, are accumulated for passing, and the object for which a reconsideration is granted, is thus defeated. The end, in such case, is to obtain a favorable decision, by the force of combination. A number of bills are brought up at one time, contending for priority; but after the order of precedence is arranged, the pioneer bill, if successful, opens a passage for its associates, and they follow triumphantly in its train — if unsuccessful, they are postponed to a more favorable opportunity. Is it too much to say, that dangerous precedents have been established? That bills have passed by the force of their associations, not by their merits? And that public confidence is shaken in the purity of such proceedings. After this exposition, it is due to the respect

[e] Const. 1821, art. 7, § 9.

which I entertain for your integrity, patriotism and intelligence, to express my conviction, that you will discourage practices so injurious to just legislation, and so derogatory from the public welfare.

Having already trespassed on your time, I shall reserve for future communication, such other subjects as may be deemed worthy of your consideration.

The causes which led to our divisions and distractions, no longer predominate. We are emancipated from the thraldom of a system of patronage, which formed a component part of our former constitution, and whose direct tendency and inevitable operation were to agitate the community with incessant convulsions; to make personal gratification the standard of political orthodoxy; to render the state the victim of political machinations at home and from abroad; and to convert the very favors conferred by its bounty into the instruments of its vassalage and degradation. With a full view of these evils, I recommended at an early period a different arrangement of the appointing power. The patronage once vested in a council of appointment[f] is now diffused; and political power, which under the former order of things was in many respects concentrated in petty aristocracies, and wielded by factious combinations, has been in a great measure restored to its authentic source, the great body of the people. That abolition, and that restoration, have dissolved the union between personal interest and political subserviency. The people, rising in the majesty of their power, above the debasing trammels of names, and the obnoxious dictations of combinations, have sustained and vindicated a system of disenthralled and independent suffrage; and the auspicious influence of this magnanimous course will be witnessed in the independence and purity of the elective franchise, in the talents and integrity of our legislative assemblies, and

[f] Const. 1777, § 23.

in the correspondent estimation of the state with our sister republics, and in the councils of the union.

We possess a territory of great extent; a soil of inexhaustible fertility, a climate of undoubted salubrity; subterranean wealth almost boundless; incalculable extent of manufacturing power; positions for prosperous commerce, unsurpassed upon the globe; vast public property in lands, stocks and canals; a flourishing treasury, a prospective and certain revenue of millions; a system of laws under which the rights of persons and property are secured, and still susceptible of great improvements; and above all, may we not say without arrogance and without flattery, that our population is religious, moral, industrious, intelligent, enterprising and high spirited, profoundly conscious of its rights, its duties and its blessings; with the principles and feelings of freedom engrafted into its moral and physical being? Enjoying as we do, these transcendent blessings, it remains for ourselves to determine whether we are worthy of the career which the Author of all good has opened to us, whether we have wisdom and virtue enough to become what he has given us the means, and indicated as his wish that we should become, a main pillar in the great and glorious fabric of freedom and social happiness, reared by the valor, established by the wisdom, and cemented by the blood of our fathers, blessing as we are blessed, and ministering as we have been ministered unto; or whether we are to prove recreant to these elevated and imperative duties, and by wasting our strength and sullying our character in petty cabals, intrigues and local agitations, commencing in folly and terminating in disgrace, we cast away the rich bounties of heaven, undermine our own prosperity, and retard the establishment of principles associated with the exalted destinies of freedom, and identified with the primary interests of the human race.

De WITT CLINTON.

Albany, 4th January, 1825.

SPECIAL MESSAGES.

January 5. To the Assembly:

"GENTLEMEN.—I have the honor to lay before you a letter from the Governor of New Jersey, transmitting an act of the legislature of that state, for the settlement of territorial limits and jurisdiction between the states of New Jersey and New York; and I have no doubt but that an overture so amicable and so reasonable, and so honorable to both states, will receive your sanction. [See note 25.]

DE WITT CLINTON."

Albany, 5th January, 1825.

January 7. To the Assembly:

"GENTLEMEN.—As a regent of the University, *ex officio*, I shall render all the aid in my power to the interests of learning and science; but as my continuance as a Regent, in my private capacity, will necessarily interfere with the legal complement of members, it has occurred to me, that it would be proper to resign the latter, which I now do.[31]

DE WITT CLINTON."

Albany, 7th January, 1825.

January 13. To the Senate: Transmitting a resolution adopted by the Legislature of Georgia, disapproving the Ohio proposition relative to the abolition of slavery. The Georgia resolution was based upon the following report presented by a Senate committee, and concurred in by the House:

"The constitutional guaranty made to the states holding slaves,[g] is not less sacred than the obligation imposed by the constitution and laws for the protection of the rights of private property. Such states owe it to themselves to

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[31] John Greig was appointed a Regent in place of De Witt Clinton, resigned.

[g] U. S. Const. art. 1, § 2, clause 3; art. 1, § 9, clause 1.

preserve unimpaired those rights, since the causes which extracted the constitutional concession on this subject continue to exist in all their force. Your committee are therefore constrained to view the resolution of the legislature of the State of Ohio as calculated to infringe the rights of the State of Georgia, in common with other states similarly situated in this particular, and as indelicate in those from whom it emanates. If the evil of slavery be considered a national one, your committee take leave to refer the legislature of Ohio to the situation of the country as it was originally settled in the south by our ancestors, and to those circumstances by the force of which slavery in America commenced its existence. While your committee contemplate, with no ordinary emotions, the ameliorated condition of the slave in the southern country, they view with regret this unnecessary interference on the part of a sister state, so well calculated to excite the anticipations and hopes of the slave, and to impel him to those acts which, instead of bettering his condition, must augment his misfortunes. Your committee, therefore, consider the resolution as violative of the true dictates of humanity; and this idea is supported by a contrast of the slave population of the south, with the wretched and miserable condition of the free people of color who crowd the houses of punishment and correction in some of our sister states. If, in the south, they do not revel in liberty, they are at least supplied with the necessary wants of life. Georgia claims the right with her southern sisters, whose situation in this regard is similar, of moving this question when an enlarged system of benevolent and philanthropic exertions, in consistency with her rights and interest, shall render it practicable. Your committee take leave, therefore, to recommend the following resolution:

Resolved, That the resolutions of the state of Ohio, proposing the emancipation of slaves, passed on the 7th day of January, 1824, be, and the same are hereby disapproved by the legislature of this state; and that his excellency the Governor be hereby requested to transmit a copy of this resolution to the executive of each of the United States."

January 17. To the Assembly: Transmitting the annual report of the Inspector of Fish oil.

January 18. To the Assembly: Transmitting the annual report of the superintendent of the Brothertown and Stockbridge Indians; an application from the Stockbridge Indians relative to the sale of their lands, and to the contemplated removal of the whole tribe to the Michigan territory; and a representation concerning the condition of those who have emigrated to that region.[32]

January 18. To the Assembly:

"GENTLEMEN.—I lay before you a communication from J. Ogden Dey, Esquire, relative to the publication of a map of this state in a correct manner, and on a large scale. A portion of this map has been executed, and if the sequel shall be correspondent, the work will possess distinguished merit, and be highly useful to the public. I have therefore, great pleasure in recommending it to your favorable notice.

DE WITT CLINTON."

Albany, 18th January, 1825.

January 19. To the Assembly: Transmitting the annual report of the Adjutant General relative to the militia.

January 25. To the Assembly:

"GENTLEMEN.—I have the pleasure to transmit to you a memorial from a numerous and respectable meeting of the citizens of Chautauqua county, relative to a proposed canal between Lake Erie and the Allegany river, by Chautauqua lake. The arguments stated in this able memorial, are so cogent, and the facts so impressive, that I can add nothing to the important considerations involved in the subject;

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32 Chapter 36, passed March 17, 1825, authorized the Governor to purchase the residue of lands owned by the Stockbridge Indians in this State so as to permit them to remove to Green Bay, Michigan, and by chapter 147, passed April 13, the Governor was authorized to purchase a part of such lands if the whole could not be obtained.

and I am persuaded, that it will be deemed worthy of those preliminary investigations solicited by the memorialists, and which ought, perhaps, in all important cases, to precede operative measures. [See note 11.]

De WITT CLINTON."

Albany, January 24, 1825.

January 25. To the Assembly: Transmitting the annual report of the Commissary General.

January 27. To the Assembly:

"Gentlemen.—In my message at the opening of the session, I stated that I had no specific information of the condition of the Central Asylum established at Canajoharie for the instruction of the deaf and dumb. I now lay before you a report and application of the directors of that institution, by which it appears that there are twenty-two pupils in it; of which, I am informed that twelve are supported by charity, and that there are also fifteen applicants for admission, of a similar description.

I also transmit a communication from Isaac Orr, recently a teacher in that institution, which furnishes some interesting information respecting the education of that unfortunate class of our fellow creatures; and as the children of the poor are most exposed to calamities of this kind, I am persuaded that you will accord with me in opinion, that the benevolence of the state ought to be applied to their relief; and I therefore earnestly recommend this institution to your patronage.[33]

De WITT CLINTON."

Albany, January 27, 1825.

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[33] Chapter 166, passed April 15, appropriated $800 to pay the debts of the Central Asylum at Canajoharie, and authorized the institution to receive two scholars from each Senate district, at an annual expense not exceeding $80 each.

January 27. To the Assembly:

"GENTLEMEN.—I submit to you a communication from Daniel Dunbar, sealer of weights and measures for Columbia county; which states that the weights and measures adopted by the state are incorrect. The important considerations connected with this subject, will necessarily prescribe a prompt and careful investigation.[34]

DE WITT CLINTON."

Albany, January 27, 1825.

January 27. To the Assembly: Transmitting the annual report of one of the inspectors of fish for the city of New York.

February 1. To the Assembly: Transmitting the annual report of the Inspector General of staves and heading.

February 3. To the Assembly:

"GENTLEMEN.—I lay before you, for your information, a report of a board of commissioners, appointed by the state of Pennsylvania, to explore the country between the Tioga or Chemung River, and the head of the Seneca lake. It may be proper to remark, that Mr. James Geddes, who formerly surveyed and took the levels of this route, reported the descent from the summit level to the head of the lake 434 feet, and to the river 52 feet. The difference between the surveys, may have arisen from starting from different points. And it is also proper to say, that the estimate of the expense, by the Pennsylvania commissioners, is much too great, especially if the locks are made of wood. [See note 11.]

DE WITT CLINTON."

Albany, February 3, 1825.

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34 The Assembly by a resolution proposed a scheme for verifying and correcting the standards of weights and measures, but the plan was not consummated.

February 3. To the Assembly:

"Gentlemen.—It has been suggested to me, by well informed persons, that great improvements may be introduced into our system for the inspection of beef and pork, intended for exportation; and that at present cattle are frequently driven from the banks of the Hudson to Boston, for sale, where a higher price can be afforded than at home, in consequence of the superior credit of the Massachusetts inspection, in foreign markets. Permit me to request your attention to this subject, as very important to the great interests of agriculture; and while we are gratified with the prosperity of our sister states, let us endeavor to participate in all judicious improvements, that may be successfully introduced.[35]

De WITT CLINTON."

Albany, February 2, 1825.

February 4. To the Assembly: Transmitting a resolution adopted by the Legislature of New Jersey disapproving the Georgia proposition for an amendment relative to the importation or ingress of colored persons into any State.

February 5. To the Assembly: Transmitting a communication from the Commissary General relative to field pieces. The Governor says "the want of field pieces is indispensably felt by that useful branch of our militia, the artillery; and at present, it is believed that forty companies at least are unprovided."

February 7. To the Senate: Transmitting the following resolutions adopted by the Legislature of New Jersey on the 29th and 30th of December, 1824:

"*Resolved,* By the Council and General Assembly of this State, That the consideration of a system providing for the gradual emancipation of the people of color, held

[35] Additional provisions relative to the inspection and packing of beef and pork were included in chapter 315, passed April 21.

in servitude in the United States, be recommended to the Legislatures of the several states of the American Union, and to the Congress of the United States.

Resolved, That, in the opinion of this Legislature, a system of foreign colonization, with correspondent measures, might be adopted, that would in due time effect the entire emancipation of the slaves in our country, and furnish an asylum for the free Blacks, without any violation of the national compact, or infringement of the rights of individuals, and that such a system should be predicated upon the principle, that the evil of slavery is a national one, and that the people, and the States of this Union, ought mutually to participate in the duties and burdens of removing it."

February 7. To the Assembly:

"GENTLEMEN.—Under the act to provide against infectious and pestilential diseases, the commissioners of the health office have received, and have now in their possession, $15,174.05, over and above all expenses in executing their offices, as appears by the Comptroller's audit of their accounts, to the first day of last month.

A considerable portion of this money has been, and the whole is now, in an unproductive state. By that statute, it is appropriated to the use of the health establishment; and the Governor is authorized to direct its investment in stock of the United States, or other securities. As stock of this description is considerably above par, and as this is also the case with other eligible securities, I submit it to you, whether it would not be advisable to authorize the commissioners of the canal fund to receive this sum as part of the loan of the current year, and to direct such disposition of it. If you see fit to adopt this course, I recommend an early attention to this subject.

DE WITT CLINTON."

Albany, 7th February, 1825.

February 8. To the Assembly: Transmitting the following communication from Joseph P. Simpson, sealer of weights and measures of the city of New York [see note 34]:

To His Excellency De Witt Clinton,

Governor of the State of New York.

The undersigned respectfully asks permission to call the attention of his Excellency the Governor, to the situation of the standard weights and measures of this State; the apology he offers for so doing, is the importance of the subject, as connected with the interest and convenience of the good people of the State.

For some years past there has been a considerable difference in the several standards of the counties of the state, particularly in the liquid and dry measures, which two standards are manifestly incorrect.

And in respect to the dry measures, this state raising and selling large quantities of grain, makes it, in the opinion of the undersigned, a subject worthy the attention of the legislature.

By the constitution of the United States, the power of establishing a standard of weights and measures, is delegated to congress;[h] and in accordance with resolutions passed by congress, two very able reports have been made on that subject; one by Mr. Jefferson, in 1791, the other by Mr. Adams, in 1819; which last report probably takes a more extensive view of standard weights and measures, than any other which has been made in this country. Mr. Adams' conclusions are, that congress will not establish a new standard of weights and measures, but direct the correction of those already in use, which were taken from the standards of Great Britain, and now in use in the state of New York, and most of the other states in the union.

[h] U. S. Const. art. 1, § 8, clause 5.

The undersigned has spent much time in trying experiments, that will now be useless, should the standard of Great Britain be continued, as no doubt it will, as the parliament of Great Britain has recently passed an act establishing a new standard of weights and measures; which act, together with a very luminous and able report of a committee of the house of commons, the undersigned has taken measures to procure, and they may be expected here early in the spring.

Should it be thought advisable still to continue the English standards, it is respectfully submitted to your Excellency, to consider the propriety of recommending to the legislature to pass an act authorizing the Governor to employ a suitable person to make correct standards, corresponding with those of Great Britain, and declaring the same, when certified by the Governor, and delivered in the Secretary of State's office, the standard of the state of New York. Also directing each county to procure, (either at its own or the state's expense,) a correct copy of each, to be deposited and kept in the county clerk's office.

It is moreover submitted to the consideration of your Excellency, that the Long Measure should be a yard divided into parts and inches; the Dry Measure to be a half bushel; and the Liquid Measure a gallon — as from those all other parts can very easily be made.

Respecting weights, should the gross weight be continued, they should consist of a 56 lb., a 28 lb., a 14 lb., a 7 lb. and a 1 lb. avoirdupois. From one pound down to its smallest denomination, should be Troy weight. But should the neat hundred be adopted, as has been recommended by the chamber of commerce of the city of New York, then the weights will require to be 50 lb. 25 lb. 10 lb. and 5 lb. instead of 56, 28, 14 and 7.

Should your Excellency think well of the subject, so as to recommend it to the attention of the legislature, and they, in their wisdom, be disposed to pass a general law on

the subject, regulating also the appointment of sealers of weights and measures, and establishing their fees, the undersigned will, with pleasure, impart to a committee, should one be appointed for that purpose, all the information he possesses on the subject.

All which is most respectfully submitted, by your Excellency's very humble servant.

JOSEPH P. SIMPSON.

Albany, February 5th, 1825.

February 8. To the Assembly:

"Gentlemen.— By the fourth section of the seventh article of the constitution 'no minister of the gospel, or priest of any denomination whatsoever, can, under any pretence or description whatever, be eligible to, or capable of holding any civil or military office, or place within this state.'

By the 18th section of the 'act to organize the militia,' it is declared, that to each regiment and separate battalion, there shall be appointed one chaplain.

Any other appointment to the office of chaplain, than that of a minister of religion, would be unusual, and not suitable; and the appointment of a person of that description, to that office, appears to be repugnant to the Constitution.

I presume that several chaplains have been appointed. I understand, however, that no commissions have been issued.

In order to remove the embarrassment which may grow out of this subject, I recommend it to the consideration and interference of the legislature.

De WITT CLINTON."

Albany, 8th February, 1825.

February 9. To the Assembly: Transmitting a statement of the income of the Sailor's Snug Harbor.

February 18. To the Assembly: Transmitting a communication from John Quincy Adams, Secretary of State, and President-elect, enclosing a circular letter from President James Monroe, containing a notice that there would be a special meeting of the United States Senate on the 4th of March, 1825, and with a request that the Governor procure the delivery of the letter to the person who might be elected senator from New York to succeed Rufus King. [See note 23.]

February 23. To the Assembly: Transmitting the annual report of the trustees of the Bank for Savings in the city of New York.

February 24. To the Senate: Transmitting a resolution adopted by the Legislature of Indiana, disapproving the Georgia proposition relative to the importation or ingress of colored persons.

February 24. To the Assembly:

"GENTLEMEN.—I transmit to you, with great pleasure, an application from a numerous body of our western fellow-citizens, respecting a navigable communication between the waters of the Allegany river and the Erie canal, and soliciting a full investigation of the proposed measure, by able engineers. Considering the respectability of the source, the importance of the object, and the impressive considerations urged in its favor, I have no hesitation in recommending the adoption of effectual preliminary measures. [See note 11.]

DE WITT CLINTON."

Albany, February 24, 1825.

February 25. To the Assembly: Transmitting the annual report of an inspector of fish for the city of New York.

March 1. To the Senate: Transmitting a communication from General La Fayette. [See note 24.]

March 5. To the Assembly: Transmitting a resolution adopted by the Legislature of Indiana approving the Ohio proposition relative to the abolition of slavery.

March 8. To the Assembly: Transmitting two resolutions adopted by the Legislature of Mississippi, one approving the Georgia proposition relative to the importation or ingress of colored persons; and the other disapproving the Ohio proposition relative to the abolition of slavery.

March 8. To the Assembly: Recommending the appointment of an agent for the Onondaga Indians in place of Ephraim Webster, deceased.[36]

March 8. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

March 12. To the Assembly: Transmitting the annual report of the inspector of flour for the counties of New York and Kings.

March 18. To the Senate:

"Gentlemen.—I submit to your consideration an interesting communication on the subject of an improvement in fire-arms. If the legislature should be desirous of substituting these fire-arms in lieu of those in general use an arrangement can be made with the national government, to receive the quota due to this state accordingly.[37]

De WITT CLINTON."

Albany, March 18th, 1825.

The communication related to a patent repeating pistol, and described its construction and operation.

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[36] Chapter 136, passed April 13, authorized the Governor to appoint an agent for the Onondaga Indians, who was to hold office two years, unless sooner removed by the Governor.

[37] A senate committee considered the subject of fire-arms, and made a report containing a detailed description of the invention, but thought it inexpedient to make any investment in the new gun for the reason that there had been no sufficient trial of it, and could not be by the State in a time of peace.

March 24. To the Assembly:

"GENTLEMEN.—I recommend a suitable provision with respect to the resignation of justices of the peace, prescribing the authority to which they are to be made, and by which they are to be accepted.

DE WITT CLINTON."

Albany, March 24, 1825.

April 7. To the Senate:

"GENTLEMEN.—The unadjusted demands of this state against the United States, growing out of the late war, amount to upwards of 180,000 dollars; and they have been either suspended for want of sufficient proof, or rejected, in some instances, on untenable grounds, by the accounting officers of the treasury of the national government; and the overture of this state for the sale of the fortifications on Staten Island, has not been yet accepted. On finding that these concerns had not been attended to for a long time, and that there was no agent authorized to bring them to a conclusion, I appointed Jabez D. Hammond, Esq. for that purpose. I now submit to you, for your information, his report on this subject, to the end that you may give such directions, and make such arrangements in relation to his agency, as you may conceive most conducive to the public interests.

DE WITT CLINTON."

Albany, April 7, 1825.

The Senate journal contains Mr. Hammond's report.

April 11. To the Senate: Transmitting two resolutions adopted by the Legislature of Missouri, one approving the Georgia proposition relative to the importation and ingress of colored persons, and the other disapproving the Ohio proposition relative to the abolition of slavery.

April 14. To the Assembly:

"Gentlemen.—As your session is drawing to a close, I take the liberty of soliciting your attention to an overture from New Jersey, proposing a negotiation on the controversy between that state and this, by appointing commissioners for that purpose, subject to the ratification of the legislature of each state. This proposal being of the most friendly and conciliatory character, attended with no sacrifice of any interest, and extending no further in the first instance than negotiation, will, I hope, be received in the same amicable spirit with which it was offered, and be adopted without hesitation. It would indeed be a subject of great regret, if the comity and respect due to a sister state, so deserving of all our regard, should be neglected on this or any other occasion. [See note 25.]

De WITT CLINTON."

Albany, April 14, 1825.

April 21. The Legislature adjourned without day.

PUBLICATION OF SENATE EXECUTIVE PROCEEDINGS.

A senate committee which considered the part of the Governor's message relative to the publication of executive proceedings of the Senate, *ante,* p. 55, presented the following report on the 10th of January:

"They have bestowed upon the subject, all the consideration which its importance demands, and they cannot perceive any sufficient reasons for altering the rules of the Senate, in relation to its executive functions. The committee do not understand the Governor to recommend that the discussion of the characters and qualifications of the candidates nominated by him, should be public. The check which publicity would give to the freedom of inquiry and of debate, and the injustice which might, in many instances

be committed towards the candidates, furnish sufficient reasons for the rule which requires that such discussion should be secret. The power of appointment to office is, in its nature, confidential. It is reposed in those whom the people have selected for that purpose, and towards whom they have extended the anticipation that they will be faithful.

With respect to the publication of the votes of the Senators, on confirming or rejecting the nominations of the Governor, the committee apprehend that the present Governor is not acquainted with the rules and practice of the Senate. By an examination of the executive journal of the Senate, it will be found that this house has, at the end of each session, declared its minutes of proceedings relative to appointments, to be public, and subject to the inspection of every citizen. This provision the committee has engrafted into the standing rules of the Senate which they have already reported. They do not perceive the necessity or the propriety of going any further. For themselves, they shrink not from the responsibility of their stations, and they are willing and desirous that all their acts should be known to the people; and for that purpose, they propose to submit the executive journal to public inspection, at the end of every session. This insures their accountability to their constituents, while it prevents a premature disclosure of the sentiments of individual members, which would only expose them to renewed and reiterated applications from unsuccessful candidates, for a reconsideration of their respective claims; and this practice is in perfect accordance with that which has hitherto prevailed in this state. Besides the printing from day to day of the executive journal, would very seldom exhibit anything more than bald resolutions, confirming or rejecting nominations, without the names of those who voted. An inspection of the journal for the last two years, will discover but few instances of a division on the nominations of the Governor.

The practice of the Senate, heretofore, and the rules proposed by your committee, furnish more publicity to the executive proceedings of the Senate of this state, than has ever been granted by the Senate of the United States. By a standing rule of that body, which has been in existence from the adoption of the constitution, its proceedings on executive business have been, and are, inviolably secret, and have never been suffered to be made public at any time. The standing rule which your committee propose, on the contrary, exposes to the public scrutiny, all the proceedings of the Senate, at the end of every session; and so far from avoiding responsibility, it invites and challenges public examination. There can be no danger but that on every question which excites the least interest, the parties concerned in the business of the Senate, in its executive capacity, will examine its records, and give the most extensive publicity to them.

From these considerations, the committee are of opinion, that no other alteration in the rules of the Senate, respecting its executive functions, is necessary, than to declare, by a general and permanent rule, that its proceedings in relation to all appointments, shall be made public, at the end of every session. And such a rule they have, as before remarked, inserted in the rules and orders already reported."

On the 19th of January, the Senate adopted rules, which contained the following, No. 27:

"Whenever the Senate shall go into the consideration of executive business, the President shall direct the gallery to be cleared, and the doors to be closed; and the proceedings of the Senate, in such business, shall be kept in a separate journal, which shall not be inspected by any others than members of the Senate, until the end of the then meeting of the legislature, at which time the same shall be public, and the clerk of the Senate may thereafter furnish extracts from the same, at the request of any citizen."

This rule was afterwards modified, and beginning with the session of 1902 the executive proceedings have been published at the end of the regular Senate journal. According to modern practice the proceedings of the Senate in considering appointments are not actually executive, in the earlier sense, but business relating to appointments is done in open Senate. The present Senate rule which relates to this subject is as follows:

"The proceedings of the Senate upon executive business shall be kept in a journal separate from its proceedings upon legislative business."

It was said in the foregoing committee report of 1825, that executive proceedings in the Federal Senate were inviolably secret, and had never been suffered to be made public. Under a resolution adopted April 4, 1828, the executive proceedings of the Federal Senate up to the close of the last session were ordered published under the direction of the Secretary of the Senate. The Executive records of the Federal Senate have been published since that time.

LA FAYETTE'S VISIT.

Acting on the Governor's suggestion relative to General La Fayette (*ante*, p. 85), the Legislature passed the following act, chapter 10, February 15, 1825:

"I. Be it enacted by the People of the State of New York, represented in Senate and Assembly, That the person administering the government of this state be, and he is hereby authorized to procure a full length portrait of general La Fayette, the early and distinguished friend of American liberty, and to place the same in some suitable situation in the capitol.

II. And be it further enacted, That on the arrival of general La Fayette in this state, the governor shall be authorized to receive him in such manner as shall become his worth and services, and shall evince the sentiments of

Lafayette

gratitude and affection entertained for him by the people of the state of New York, and to provide such means as shall be expedient, to render his residence in the state agreeable, and to facilitate his journey through the same.

III. And be it further enacted, That the comptroller shall draw his warrant on the treasurer, to defray any expenses that shall be incurred under this act, upon the amount thereof being certified by the governor, and that the same shall be paid by the treasurer out of any monies not otherwise appropriated.

IV. And be it further enacted, That the governor be requested to transmit this act to general La Fayette, with the reports of the committee of the two houses on the subject, and expressing to him the desire of the two houses of the legislature to receive him in the assembly chamber, whenever it shall be convenient to him."

According to the Governor's special message of March 1, he performed the duty imposed upon him by the act in a letter to La Fayette dated the 16th of February, and received the following reply:

Washington, *February* 22, 1825.

Sir.—The honorable and most gratifying resolutions which the Legislature of New York have deigned to pass in my behalf, and which your Excellency has been pleased to convey in the kindest terms, have penetrated my heart with feelings of respect and lively gratitude. Happy I would be to set out immediately for the seat of government, and offer to both houses in person, a tribute of my devoted sentiments; but I am to-morrow beginning a long journey to the southern and western states, which must terminate in Boston on the celebration relative to the Bunker Hill monument, an object interesting to the whole union, and to which I am positively engaged. I have anticipated the pleasure to go from Pittsburgh to the western

parts of the state of New York, enjoy the navigation of the canal, and proceed through Albany and Vermont to the anniversary engagement, which I cannot fail to fulfil. My progress must be rapid, and shall be so. Nothing but impossibility for want of time to take that tour, can prevent me from executing this plan. In the meanwhile, I beg your Excellency to offer to both houses my acknowledgments for the favors conferred upon me, the sense of which shall animate my heart to my last breath. It is particularly gratifying to me to receive them from the representatives of the state where first, on my landing in last August from Europe, I have been welcomed with a kindness truly auspicious for the series of my happy visits throughout the union. Be pleased yourself to accept the expression of the grateful and affectionate respect, with which I have the honor to be your excellency's

Obedient servant,

LA FAYETTE.

The portrait provided for by this act was painted by Charles Ingham, and is in the Executive Chamber in the Capitol at Albany. It bears the following inscription:

"By act of the Legislature, State of New York, passed February 15, 1825, this portrait of General La Fayette was painted from life by Charles Ingham, an artist of rank, on the occasion of La Fayette's last visit to the United States in 1825, and on approval of Governor De Witt Clinton, it was placed in the Executive Chamber at the Capitol, July 8, 1826, where it remained fifty-five years and until January 25, 1882, when it was put, with the original frame, where it now hangs in the Executive Chamber New Capitol."

De WITT CLINTON, Governor.

The legislature met the 3d of January, at which time the Governor sent to each house the following

ANNUAL MESSAGE.

Fellow Citizens of the Senate and of the Assembly.— The blessings of Divine Providence still rest upon our country. Peace, liberty and plenty continue to shed their auspicious influence over the land, and every man may sit down under his own vine and under his own fig tree, and there is none to make him afraid. The exertions of agriculture have been rewarded with abundant harvests. The skill and ingenuity of our mechanics and manufacturers have received liberal and merited encouragement. Internal trade was never more flourishing, and every sea witnesses the enterprising spirit of our commerce. We have been exempt from those malignant diseases which in various shapes frequently occur in new settlements, and sometimes scourge our maritime cities, and good health with its attendant blessings, has generally prevailed. The cause of useful knowledge is daily gaining ground, and the advantages of education are duly appreciated and generally diffused. Notwithstanding immense emigrations to the fertile and wide spread regions of the west, our population is in a state of rapid advancement. In every direction we perceive the prominent indications of beneficial improvement and growing prosperity; the erection of houses, of academies, of churches, and of other useful edifices — the expansion of old, and the creation of new towns and cities; an animated attention to the promotion of agriculture, and an increased disposition to cherish useful inventions and to patronize the facilities of beneficial communication. And

we also experience the disappearance in a great degree of those agitations and convulsions which formerly disturbed our tranquillity, and we recognize a magnanimous spirit of conciliation and harmony, which appears to grow with the growth and strengthen with the strength of our beloved country.

The distresses which at present afflict our commercial cities, and which are extending into the interior, have arisen from causes, that will sometimes occur in the most prosperous communities, and which being temporary in their nature and transient in their character, cannot exist for any considerable period of time. These mercantile convulsions, however afflicting to individuals, or alarming to the public, rarely make serious impressions on the general prosperity. In every community blessed with freedom and intelligence, there is a sustaining and redeeming power, which soon invigorates the tone of public confidence, and remedies the mischiefs of cupidity, the miscalculations of enterprise, and the excesses of an adventuring spirit.

While this flourishing condition of the state is calculated to elicit our gratitude to the Almighty Dispenser of all good, it must at the same time, admonish you of your high responsibilities. Bound, as you are, to the community, by the double connection of citizens and legislators, your duties cannot be faithfully fulfilled in either character, without an entire devotion to those interests that are identified with the prosperity and the glory of our country.

The first duty of government, and the surest evidence of good government, is the encouragement of education. A general diffusion of knowledge is the precursor and protector of republican institutions; and in it we must confide as the conservative power that will watch over our liberties, and guard them against fraud, intrigue, corruption and violence. In early infancy, education may be usefully administered. In some parts of Great Britain, infant schools have been successfully established, comprising chil-

dren from two to six years of age, whose tempers, hearts and minds are ameliorated, and whose indigent parents are enabled by these means, to devote themselves to labor without interruption or uneasiness. Institutions of this kind are only adapted to a dense population, and must be left to the guardianship of private benevolence. Our common schools embrace children from five to fifteen years old, and continue to increase and prosper. The appropriations for last year from the school fund amount to $80,670, and an equivalent sum is also raised by taxation in the several school districts, and is applied in the same way. The capital fund is $1,333,000, which will be in a state of rapid augmentation from sales of the public lands and other sources. And it is well ascertained that more than 420,000 children have been taught in our common schools during the last year. The sum distributed by the state is now too small, and the general fund can well warrant an augmentation to $120,000 annually.

An important change has taken place in the free schools of New York. By an arrangement between the corporation of that city and the trustees of the free school society, those establishments are to be converted into public schools, to admit the children of the rich as well as of the poor, and by this annihilation of factitious distinctions, there will be a strong incentive for the display of talents, and a felicitous accommodation to the genius of republican government. In these seminaries, the monitorial system has been always used, and it has in other institutions been applied with complete success to the high branches of education.[1]

Our system of instruction, with all its numerous benefits, is still however susceptible of great improvement. Ten years of the life of a child may now be spent in a common

[1] The name of the Free School Society of New York was changed by chapter 25, passed January 28; it was thereafter to be known as the Public School Society of New York. The scope of the society was enlarged, and it was to provide for the education of all children in the city.

school. In two years the elements of instruction may be acquired, and the remaining eight years must either be spent in repetition or in idleness, unless the teachers of common schools are competent to instruct in the higher branches of knowledge. The outlines of geography, algebra, mineralogy, agricultural chemistry, mechanical philosophy, surveying, geometry, astronomy, political economy, and ethics, might be communicated in that period of time by able preceptors, without essential interference with the calls of domestic industry. The vocation of a teacher, in its influence on the characters and destinies of the rising and all future generations, has either not been sufficiently understood or duly estimated. It is or ought to be ranked among the learned professions. With a full admission of the merits of several who now officiate in that capacity, still it must be conceded that the information of many of the instructors of our common schools, does not extend beyond rudimental education;— that our expanding population requires constant accessions to their numbers, and that to realize these views, it is necessary that some new plan for obtaining able teachers, should be devised; I therefore recommend a seminary for the education of teachers in the monitorial system of instruction, and in those useful branches of knowledge which are proper to engraft on elementary attainments. A compliance with this recommendation will have the most benign influence on individual happiness and social prosperity. To break down the barriers which poverty has erected against the acquisition and dispensation of knowledge, is to restore the just equilibrium of society, and to perform a duty of indispensable and paramount obligation. And under this impression, I also recommend that provision be made for the gratuitous education in our superior seminaries of indigent, talented and meritorious youth.[2]

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[2] A senate committee considered the suggestion of the Governor as to the training of teachers, and presented a report, stating among other things that

I consider the system of our common schools as the palladium of our freedom; for no reasonable apprehension can be entertained of its subversion, as long as the great body of the people are enlightened by education. To increase the funds, to extend the benefits, and to remedy the defects of this excellent system, is worthy of your most deliberate attention.[3] The officer who now so ably presides over that department, is prevented by his other official duties from visiting our schools in person, nor is he indeed clothed with this power. A visitatorial authority for the purpose of detecting abuses in the application of funds, of examining into the modes and plans of instruction, and of suggesting improvements, would unquestionably be attended with the most propitious effects.

It gives me pleasure to state that our literary colleges continue to deserve high praise and munificent encouragement. The infant college of Geneva, which is in a promising state and under able superintendence, has never experienced the public bounty. As the establishment of an institution of this kind imposes an obligation to make suitable provision for its support, I presume that you will not hesitate to take it under your liberal patronage.[4] I regret to state that, owing to intestine divisions, the medical college in New York has not exhibited, this season, that increasing prosperity which might reasonably be expected

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there were then 7,642 school districts in the State which was the number of teachers actually required. The committee thought the Governor's suggestion respecting the establishment of an institution expressly for the purpose of educating teachers would not answer the exigencies of the case, that such a seminary would, however, afford some relief, but that colleges and academies must be chiefly relied upon to furnish teachers for the common schools. The committee brought in a bill to "increase the common school fund and the literature fund, to promote the education of teachers, and to regulate their appointment." The bill was not passed.

[3] Chapter 298, passed April 18, increased the appropriation for common schools.

[4] A senate committee reported in favor of granting aid to Geneva College, and brought in a bill for that purpose, but it was not passed.

from the high endowments and acknowledged abilities of its professors. The other medical college at Fairfield, under the guidance of talented and learned men, is now in a flourishing condition. The charter of the Historical Society of New York has expired, and its finances are in a state of great depression. Its collections of books, manuscripts, medals and maps, illustrative of the antiquities and history of our country, are very valuable, and ought to be preserved for the public benefit. The resuscitation of this society, and a liberal provision for its extended usefulness, are measures worthy of your adoption.[5] I cannot recommend in terms too strong and impressive, as munificent appropriations as the faculties of the state will authorize for all the institutions to which I have referred, and to all other establishments connected with the interests of education, the exaltation of literature and science, and the improvement of the human mind.

In 1818, I had the pleasure to congratulate the legislature on the auspicious commencement and successful progress of the contemplated water communications between the great western and northern lakes and the Atlantic Ocean; and I now have the peculiar gratification to felicitate you on their completion. On the 26th of October last, the western canal was in a navigable state, and vessels passed from Lake Erie to the Atlantic Ocean. In about 8 years, artificial communications near 428 miles in length have been opened — to the Hudson River from Lake Champlain by the northern canal — to Lake Ontario by the Oswego River and the western canal, and to Lake Erie and the other western lakes by the latter canal — thus affording an extent of inland navigation unparalleled in the experience of mankind. The expense of the works and of some auxiliary, connected and incidental operations, amounts to $9,130,373

[5] The charter of the New York Historical Society was revived and continued by chapter 41, passed February 10.

83-100, exclusive of interest paid on loans. The canal debt is as follows:

$4,524,270 99-100	at 5 per cent.
3,213,500	at 6 per cent.
Total $7,737,770 99-100	

The annual interest of which is $419,023.55. The sum of $270,000 of the six per cent. stock is reimbursable at the pleasure of the state after the first day of October, and the remainder of the debt after the first day of July 1837 and 1845. The amount of tolls received this year has not been exactly ascertained, but it will not fall short of half a million. The whole train of events associated with these works, and the auspicious consequences that have accrued, demonstrate the energy of a free and intelligent people, and their ability as well as disposition to do good. The spirit of internal improvement continues in full power with us, and has extended itself to other states; and it is to be sincerely hoped that all its movements and operations will be attended with distinguished and numerous blessings. The reflections which naturally grow out of this occasion are of immense importance to the public interests. In the first place, our attention must be fixed on the prompt extinguishment of the debt. This is a duty enjoined upon us by the constitution, by every consideration of policy, and every dictate of patriotism. It is obvious that the work will in a few years pay for itself, or in other words, that the income will defray the expense of erection. The auction and the salt duties, and the proceeds of the sales of land, together with the excess of the income of tolls beyond the interest of the debt, will certainly exceed $400,000 this year, which may be applied to the payment in part of the loans. The sum reimbursable in October next can either be discharged from that source, or exchanged for an interest of five per cent. You will, I am confident, perceive the

necessity of making full and comprehensive arrangements, whereby your indispensable obligations in this respect may be effectually fulfilled, and a more economical system of expenditure established.[6] It is evident that there are defects in the works, which require remedies, and that there are improvements and additions which ought to be made. The low bridges are a subject of universal complaint, and have occasioned the loss of several valuable lives. They not only greatly diminish the convenience of traveling, but will in a considerable degree impede the transit of cotton and some of the products of our own soil. The banks of the canals, which in some places are continually wearing away, require protection; and all who have witnessed the increase of transportation must admit that in a short time a double set of locks, and perhaps a canal on the north side of the Mohawk from Utica, eastward, will be required. The feeder at Glens Falls ought to be completed. This work is in a state of considerable forwardness, and will be useful as a canal, particularly for the transportation of lumber; and in case any serious disaster should happen to the Great Dam at Fort Edward, it would afford an abundant supply of water to the Champlain canal, which would otherwise be destitute of it.

The auspicious consummation of the canals naturally called forth universal expressions of joy, not from a spirit of ostentation or vanity, but from a conviction that the moral impression would have a most felicitous effect in keeping alive a noble spirit of improvement, in promoting other undertakings, and in elevating the character of the state. During the celebration of this auspicious event, the lives of two worthy citizens, without any imprudence on their part, were destroyed by the explosion of a cannon in Cayuga county, and they have left, as I am informed,

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6 There was considerable canal legislation at this session, some of a general and some of a special or local character, but nothing which seems to deserve special attention.

helpless and destitute families. I submit it to you, whether the beneficence of the state might not be worthily dispensed to the forlorn widows and orphan children of these unfortunate men.

In considering the improvements of an analogous character which ought to be attempted, it will be found that they relate principally to navigable communications between the Susquehannah, St. Lawrence, and Allegany rivers and the Erie canal. There are others undoubtedly of great moment, which merit particular attention. The surveys and estimates required by the "act to provide for the surveys of certain canal routes therein mentioned," will shed light on this subject and illustrate the claims of most of the contemplated canals to your countenance, which will of course, in proportion to their relative importance, receive a support only limited by their essential requirements, by the public resources, and by the indispensable demands of other important objects.

Under the "act concerning the Erie and Champlain canals," passed the 20th of April, 1825, two commissioners were appointed to co-operate with one of the acting canal commissioners, for the appraisement of all unsatisfied damages that may have been sustained by the construction of the canals; and it is to be hoped that this measure, so imperiously required by a due regard to the rights of property and by a sense of public justice, will be brought to a prompt and satisfactory termination.

It has sometimes been thought expedient to combine with grants or authorizations for enterprises presumed to be beneficial to the community, certain indulgences or privileges, as a reward to the undertakers, and as an encouragement to the undertaking; and it is apprehended, that in some cases the end has been sacrificed to the means, and that the primary object has been overlooked for subordinate considerations. I am gratified in saying that the proceedings of the company incorporated for making a navigable com-

munication between the Hudson and Delaware Rivers have been marked by a different spirit, and have been distinguished for good faith. The whole extent of this proposed work is about 114 miles, and 65 miles are already under contract and in a state of considerable progress, and more work has been performed on it than was done on the Erie canal the first year, although the latter was begun much earlier in the season. This communication will be very important for the supply of anthracite coal and other useful minerals, lumber and other products of the fertile regions with which it will have connection. In looking at the map of the state and observing the extent of the Delaware River, and the use made of it for descending navigation above the point where it unites with this canal, and viewing the near approach of the Susquehannah river to the Delaware at the Great Bend, and considering the facilities which this work will give to the population of our southern counties contiguous to the Pennsylvania line for trade with our commercial emporium, I cannot but felicitate you on its progress. The success of this measure will, I hope, induce you to look with a favorable eye on the proposed union of the Great Bays of Long Island — a measure vastly important to our population in that quarter and to the city of New York. But all future grants to associations for public undertakings, coupled with encouraging provisions for individual emolument, ought to be so framed as to preclude the evasions of cupidity, and coerce an entire compliance with the intentions of the legislature.

It is impossible to reflect on the proposed canals of Ohio without appreciating their important connection with the interests of this state, with the stability of the union, and with the general prosperity. On the 4th of July last, a canal from the Ohio river at the mouth of the Scioto to Cleveland, on Lake Erie was begun, and is to be 306 miles in length; another one from Cincinnati to Dayton 60 miles long is also commenced. These works are in a prosperous

way, under the guidance of very able boards of construction and of finance, and sanctioned by the favorable judgment and general support of a moral and intelligent people. Ample provision has been made for the payment of interest on loans, and for the reimbursement of principal, and I am confident that no investments of capital can be made with better security and with more certainty of punctual repayment. Kentucky has incorporated a company with liberal grants and privileges for making a canal round the falls of the Ohio river at Louisville, and this operation is going on under respectable auspices. Illinois has authorized an artificial navigation between the river of that name and lake Michigan, under very encouraging circumstances; and other projects for uniting the Great Lakes of the West with the waters that run into the Mississippi are in contemplation. When we consider that these communications will secure to our commercial emporium a great portion of the trade of the valley of the Mississippi and the neighboring regions, and that the great canal of Ohio in particular, will be finished in three or four years, and is in fact a continuation or prolongation of the Erie canal through a most fertile and productive region, destined in a short time to be one of the most populous and flourishing states of the confederacy, we cannot too highly estimate their importance, nor too liberally extend all the encouragement in our power.

As the canals which have been constructed terminate in the Hudson river near the head of tide water, it is essential as well on that account as for many other considerations, that there should be good navigation for vessels of large burden to the towns and cities on the upper waters of that river. It is now well understood that transhipments of descending articles will be made at those places from canal to river vessels, and that the reverse will be adopted in relation to ascending commodities; and this impression is confirmed from the facilities introduced into Great Britain for transhipping articles usually transported

in bulk, and which will no doubt be followed by other improved inventions of a similar nature. The removal of the obstructions to the navigation arising from the formation of bars and shallows, has heretofore received the aid of the legislature, and I recommend the whole subject, in all its attitudes, presentations, bearings and relations to your most deliberate consideration, under a full persuasion that you will decide with wisdom and act with energy in a case so deeply interesting to our inland cities and villages, our internal trade, and agricultural, manufacturing and commercial prosperity.[7]

The harbor of New York has been generally considered, on account of its vicinity to the ocean, and its secure and spacious accommodations, among the best in the world — and the importance of maintaining it in an excellent condition, is greatly increased by the co-operation of an immense inland trade, with a most extensive external commerce; and it is to be hoped that the wisdom and foresight of the respectable municipal authorities will allay the apprehensions which many worthy citizens entertain on that account, from the augmented velocity of the tides, produced by erections in the river, and any salutary measures that require your sanction, will, I am certain, receive it.

By virtue of the "act to provide for the survey of a land communication between Lake Erie and the Hudson river" Nathaniel Pitcher of the county of Washington, Jabez D. Hammond, of the city of Albany, and George Morell of the county of Otsego, were appointed State Road Commissioners, with authority to explore and survey the various routes for a good road from Lake Erie to the Hudson river; and between the route of the Erie canal and the

[7] An Assembly committee recommended the improvement of the navigation of the Hudson River by means of a dredging machine, and a bill was brought in for that purpose. The committee also recommended the enactment of a law authorizing the construction of a ship canal by private capital from Greenbush to a point near New Baltimore, and brought in a bill to incorporate the Hudson Ship Canal Company, with a capital of $1,000,000.

Pennsylvania line. It is understood that they have been sedulously employed in this investigation during a great part of the past season; and that their report will be prepared and presented as soon as the arduous and complicated inquiries and examinations which it necessarily involves, will permit. I am more and more impressed with the importance of this project, and from the information which I have acquired since its suggestion, and from a personal knowledge of the general physiognomy of the country, I am firmly convinced that it is practicable, that it can be constructed at a moderate expense, and that it will be productive of incalculable benefit to a very considerable portion of our population, which cannot, from its remote and sequestered position, participate in the advantages of our artificial navigation. I hope therefore, that no considerations of economy, no personal views, no local interests, no conflicting plans, will prevent you from carrying this measure into complete effect, so as to realize the contemplated object in the most effectual manner, by subserving the best interests of the greatest number; and I trust that no differences will arise on this question, which cannot be reconciled by an accommodating spirit, seeking the general gratification and counseling the general good.

As connected with the subject, permit me to suggest another improvement, which has an interesting bearing on the accommodation of a considerable population in the vicinity of the northern lakes. It is well known that the roads in that quarter are very defective, and that there is in fact no good communication by land from the northern parts of the state, along and near those lakes to the Hudson River. It is contemplated to construct a great road in that region to terminate at Sandy Hill or Fort Edward; and it is certainly an object worthy of your favorable interposition.

I have at various times solicited the attention of the legislature to the encouragement of agriculture, the first

and best pursuit of man; and which, in its two-fold character, as an art or a science, is susceptible of great improvement, and demands and deserves your fostering patronage. As this great department of human industry is under the special cognizance of the state governments, it is peculiarly incumbent on them to devote their utmost attention to its interests. The most effectual countenance that can be afforded, is by establishing a quick, economical and safe access to good markets for the disposal of its productions — and although this has been accomplished to a great extent, yet much remains to be done. Every facilitation of the means of communication by roads and canals, is a premium for the advancement of agricultural prosperity. The aid heretofore rendered has certainly dispensed much benefit; and if there exist insurmountable prejudices against it in some places, on account of imputed malversation in the distribution of premiums, or the supposed inordinate avidity of the opulent to obtain them, without any other recommendation than the means furnished by their wealth or from any other cause, other modes than those heretofore adopted might be resorted to for cultivating and elevating this cardinal interest. A wide and unexplored field of improvement lies before us. Experimental and pattern farms; plantations of useful trees for ship building, architecture and fuel; labor saving machines; improved seeds and plants of those productions now used; new modes of cultivation; new objects for cultivation, and the whole range of rural economy, are subjects deserving your animating support. Flax, hemp and wool are among our most valuable productions, and are essential ingredients in some of our most important manufactures. The cultivation of the two first articles has been much impeded by the want of labor-saving machines for their due preparation — and the raising of sheep has been greatly discouraged by the depredations of wolves, foxes and dogs. If that desideratum were supplied, and those

evils prevented, there is little doubt but that these productions would realize as important benefits to us, as are derived from the cultivation of cotton by our southern brethren.

Associations have been established in Great Britain and in a few cities in this country for instructing mechanics in the departments of science connected with the useful arts, and they have a most excellent effect in developing talent and stimulating ingenuity. The numerous claims for new inventions and discoveries which are constantly seeking protection under patents, when they are sometimes neither practicable, nor original, nor beneficial, might be suitably disposed of by passing, in the first instance, through the ordeal of the scientific men who preside over or participate in the concerns of our mechanic and scientific institution; and the appropriation of an adequate fund under their superintendence, for rewarding the authors of approved inventions, would have a tendency to cherish intellectual worth, and to administer to the best interests of the community.

Although we are furnished with excellent anthracite coal from Pennsylvania, at moderate prices, which will be lowered when the canals, communicating with the coal-beds are finished; and although bituminous coal of the best quality may be delivered at Albany from Ohio, on the completion of its canal, for little more than seven dollars a chaldron, yet this fossil is so essential to domestic accommodation, and so identified with the interests of manufactures and the useful arts, that we ought not to lose sight of the advantages that will be derived from a multiplication of the sources of supply, and from procuring it in our own state. There are strong indications of its presence in various places, and it is confidently alleged that it has been detected in different parts of our country. A vigilant exploration by well informed men would in all probability not only develop this article, but other useful minerals;

and the expense of such investigations would be of no consequence when compared with their important results.

During the past year, ten criminals have been sentenced to the punishment of death — nine for murder, and one for arson of an inhabited house — of which nine have been executed, and the punishment of the other has been exchanged for imprisonment for life in the state prison at Auburn. It is impossible to advert to the stern necessity which imposed this duty on the public functionaries, and to contemplate this unusual number of capital punishments proceeding from the most horrible crimes, without the most painful emotions. Besides this, several other criminals have been tried for homicide and convicted of manslaughter. I presume that there are no peculiar causes which have produced this unprecedented perpetration of atrocious crimes, and it is to be hoped that the present year may pass off without any. In the revision of our statutes, from which I anticipate great benefit to the public, and much honor to the authors, it is very desirable that the crime of murder may be accurately defined and distinguished into murder of the first and murder of the second degree, and that the punishment of death may be confined to the former. The necessity of this arrangement will be evident, when it is understood that in two of the cases to which I have alluded, the nature of the offence, whether murder or manslaughter, was a question of doubt with some persons skilled in the criminal law. Burglary is in all cases punishable with imprisonment for life in the state prison, when in some instances it is but a slight offence. The doctrine of constructive felonies is involved in much obscurity, and requires legislative exposition. The punishments for violations of the act against forgery or counterfeiting, are arranged without a due regard to the nature of the offences, and may exhibit singular incongruities, as adjudged by different tribunals. Indeed the whole system requires careful revision and considerable amelio-

ration. As little latitude as possible ought to be left to judicial discretion. The crime ought to be as accurately described, and the punishment as distinctly declared, as the wisdom and language of men will permit. Under the administration of our present imperfect code, the same offence frequently receives a different degree of punishment in different criminal courts.[8]

During the recess I have had an opportunity of visiting the state prison in New York, and am gratified in saying that it is in an excellent condition, and that the inspectors and other officers are entitled to great praise for their able management of its important concerns. The average number of prisoners in it for the last year was 575 — and the support and clothing of each prisoner cost $32.72. There is now a balance in favor of this prison of $5,825.33, to meet the expenses of this year; and it is believed that if the judicious alterations recommended by the inspectors at the last session had been adopted, the guard and keepers might have been diminished, and that the income from the labor of the convicts might have met every expense. The new state prison erecting at Sing Sing, in Westchester county, was commenced in May last, and will probably be finished in the autumn of 1827. The materials for the building, except iron, are found on the spot. No wood is used in the construction, and it will be entirely incombustible. The ground (about 130 acres) has cost about $20,000. A great part of the work is done by convicts who are secured in the night time in 60 cells already provided. The principal material is excellent marble. I have not obtained particular information of the prison at Auburn, but I have reason to believe that it is in an excellent condition.

The efficacy of punishment consists in its certainty, not in its severity; and I have therefore endeavored to exercise

[8] The subject of crimes and their punishment was included in the Revised Statutes, part of which were enacted in 1827, and a part in 1828.

the pardoning power with a view to this policy. I do not recollect a single instance where pardons have been granted without evidence of good conduct in prison, and without the recommendation of district attorneys, courts or inspectors; and I believe that in every case considerable punishment had been previously inflicted. In such an immense and growing population, there will be an increase of crimes, and the inefficacy of our penitentiary system must not therefore be inferred from it. There is every reason to believe, that under the former sanguinary code, offenders would have been more numerous, from the difficulty of procuring their conviction and bringing them to punishment. Pardons, in the judgment of the inspectors, are sometimes merited by a course of good conduct, and at other times are rendered proper after sufficient suffering. After satisfactory evidence of reformation, they have a salutary influence on the conduct of the prisoners in general. A confinement of several years in a state prison generally impairs the healths, sometimes destroys the constitutions of the unhappy subjects; and in many instances a continuance would amount to the punishment of death, when it was not intended, and when it ought not to be inflicted. In cases of this kind it is due to the best feelings of our nature, and it is demanded by the voice of justice to extend the hand of mercy.

The best penitentiary institution which has ever been devised by the wit, and established by the beneficence of man, is in all probability the House of Refuge in the city of New York for the reformation of juvenile delinquents. It takes cognizance of vice in its embryo state, and redeems from ruin and sends forth for usefulness those depraved and unfortunate youth, who are sometimes in a derelict state, sometimes without subsistence, and at all times without friends to guide them in the paths of virtue. The tendency of this noble charity is preventive as well as remedial; and during the short period of its existence, its

salutary power has been felt and acknowledged in the haunts of vice, and in the diminution of our criminal proceedings. I cannot recommend its further encouragement in language too emphatic; and I do believe, if this asylum were extended so as to comprehend juvenile delinquents from all parts of the state, that the same preserving, reclaiming and reforming effects would be correspondingly experienced.[9]

The state of the militia has not materially varied since my last annual communication; and I know of no important improvements necessary to engraft into our existing code. I have every reason to be gratified with the prevailing spirit, and with the general disposition of this useful and respectable body of our fellow citizens, to improve themselves in military knowledge and discipline, and to render their country service when necessary.

I have frequently been called on for the loan from the arsenals of muskets, rifles, and other implements for the accommodation of new raised corps; but not having express authority for the purpose, I have in every instance declined interference.

There are about 200 companies of horse and field artillery, and they are provided with only 158 pieces of artillery; allowing but one piece to each company, there is consequently a deficiency of 42. There are several artillery companies totally unprovided; and there are now 70 applications to the commissary general for a supply, which of course cannot be furnished. There are 12 brass and iron field pieces in the arsenal not mounted; directions for that purpose, and for procuring 30 new ones, would be very useful and accommodating to that important branch of our militia.

The inhabitants of Putnam county, to a great extent, derive their titles to their farms from confiscated property

[9] By chapter 24, passed January 28, the Society for the Reformation of Juvenile Delinquents was authorized to receive children committed to it by courts in any part of the State.

sold by the authority of the state. It is understood that there is an adverse claim, and that the death of an individual in England has removed all obstacles to its assertion. In this crisis, involving the interests of a numerous, industrious and meritorious population, it is your bounden duty to take prompt and decisive measures for their indemnification and protection. I learn that the claimants have no disposition to resort to any other measure than amicable negotiation. I would therefore suggest whether it would not be expedient to constitute a board of able jurists, with power to inquire into the validity of the adverse title; and, if in their opinion it should be valid, to institute a negotiation, and to enter into an arrangement for its complete extinguishment, subject however to the ratification of the legislature; and that the law officers of the state be instructed to defend the innocent possessors at the public expense, against any suits that may be brought. I feel assured, that whatever may occur in the case, or grow out of these proceedings, you will always save them harmless.[10]

This state being now only represented by one member in the senate of the United States, I solicit your immediate attention to the enactment of a law providing for an election as soon as the forms of legislation will permit; and I hope to see this vacancy supplied in a manner that will reflect honor on your discernment and patriotism.[11] The census lately taken, affords conclusive evidence of our progressive population, and furnishes the most valuable statis-

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[10] Chapter 134, passed April 8, authorized the attorney general to take charge of the defence of actions brought to enforce claims growing out of the Morris titles in Putnam and Dutchess counties.

The Astor claim which grew out of the same titles, was considered by a Senate committee, which recommended a resolution providing for the appointment of a committee to investigate the claim and report to the legislature at the next session.

[11] Chapter 3, passed January 13, provided for the election of a Senator on the 14th. On that day, Nathan Sanford, late Chancellor, was elected in place of Rufus King whose term had expired.

tical information. It is now necessary to make a new apportionment of the representation in the legislature; and on this occasion I would suggest, whether in case of an equality of votes between individuals for legislative seats, or death, or resignation, it would not be well to make provision for a new choice.[12]

It is provided in the constitution "that the governor may remove any sheriff, clerk or register, at any time within the three years for which he shall be elected, giving to such sheriff, clerk or register a copy of the charge against him, and an opportunity of being heard in his defence, before any removal shall be made."[a] There is no authority conferred in such cases to compel the testimony of witnesses, in order to substantiate or refute the accusations; and the testimony now voluntarily given, has not the sanction of a judicial oath; and thus the innocent may suffer, or the public interest sustain detriment.

The people of the United States have conferred honor on themselves by rendering due honor to that distinguished friend of the human race, General La Fayette, during his auspicious visit to this country.[13] While we are thus attentive to the powerful claims, and grateful for the distinguished services of the living hero, let us not be unmindful of the illustrious dead. Captain Macdonough distinguished himself during the last war by capturing a British fleet on the waters of this state; and at a most perilous and eventful period, protected our frontiers against invasion, and covered himself with immortal glory. This state, greatly

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[12] An apportionment act, chapter 289, was passed April 18. It included both branches of the Legislature. By chapter 245, passed April 17, a special election was to be ordered in case of a tie vote for member of Assembly. The board of county canvassers was required to give notice of the election. The same act required the Governor to call a special election to fill the vacancy in the office of member of Assembly, caused by the death of a person elected, after his election and before the first day of next February.

[a] Const. 1821, art. 4, § 8.

[13] As to La Fayette's visit see *ante*, p. 110.

to its honor, has noticed him favorably in different ways. The local government of the city of New York has with characteristic good feeling and public spirit, evinced the highest respect for him when living, and which was signally manifested after his death. I have on another occasion publicly and officially expressed my sense of his merits, of his services, and of his demands on the public gratitude; and as nothing has since occurred to change my opinion, I now consider it incumbent on me to propose the erection of a monumental memorial, illustrative of the deep impressions which his heroic services have made upon the people of this state.[14]

On this occasion, it may not be improper to present to your notice the case of the orphan children of Robert Fulton. That great mechanician, after having perfected the most useful invention of the age, departed this life, leaving nothing to his children but an illustrious name and his interest in a grant of this state. Deprived of the benefits of that grant, they are now thrown almost destitute on the world. Justice, equity, magnanimity and benevolence speak loudly in their favor; and it is now in your power, by a recognition of the services and claims of that benefactor of the world, to rescue, so far as you are concerned, republican governments from a standing reproach.[15]

It is advisable for you to turn your attention to the serious accidents which have occurred in the navigation of steamboats, and to the dangers to which they are exposed from the absence of a fixed rule in relation to their passing each other. The application of the law of the road to steamboats, and the adoption of judicious precautionary

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[14] An Assembly committee made a report, declaring it inexpedient to appropriate public money for the purpose of a monument to Commodore Macdonough.

[15] See *post*, p. 150, for an Assembly committee's report recommending aid to Robert Fulton's heirs.

measures for the safety of travelers, whether by land or by water, are subjects well worthy of your attention.[16]

The protection which this state has always afforded to our red brethren, reflects honor on humanity. Several of them have, greatly to their benefit, removed to their recently acquired territory in the vicinity of Lake Michigan, while others manifest an intention to remain in their present possessions. I regret to state that the St. Regis Indians have been convulsed by party spirit, which has produced contested elections for trustees, and difficulties in the payment of their annuities.

I beg leave to refer you to the recommendations which I had the honor to present to the legislature the last session, and which were not conclusively acted on, and particularly to the amendments proposed to the constitution, respecting the elective franchise, and the choice of justices of the peace by the people.[17]

While it is our imperative duty to support the national government in all its constitutional functions and patriotic demonstrations, we are equally bound to sustain the just rights and legitimate authorities of the states. The one is intimately blended with our power and safety, and the other is identified with the preservation of free government. They are component and essential parts of the same magnificent system, and the pillars cannot be destroyed without a subversion of the whole edifice.

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[16] Chapter 222, passed April 17, "for the safety of passengers in steamboats and of travelers by land and by water," required steamboats meeting on the Hudson River to pass on the starboard side. The same act contained provisions regulating the landing of passengers in small boats and the safety of travelers on highways.

[17] These amendments, relating to suffrage and the election of justices of the peace, which were adopted by the legislature of 1825, were again adopted by the Legislature of 1826, and by chapter 278, passed April 17, provision was made for submitting the amendments to the people at the annual election in 1826. Both amendments were approved. An act passed in 1827, chapter 179, prescribed procedure for the election of justices of the peace.

I have thus, fellow-citizens, in obedience to the mandate of the constitution, communicated the condition of the state, and recommended such matters to you as I have judged expedient. It may be proper to observe, that as I intend to shrink from no just responsibility, and mean to be explicitly understood by our constituents and their representatives, I have not clothed my recommendations in ambiguous phrases and general terms, but have been as precise, as specific, and as detailed as a full and comprehensive view of the subjects submitted, require; and I am fully persuaded, that in pursuing this course, which every public servant owes to the source of all legitimate authority, the errors of the understanding will meet with that liberal reception which is due to the purity of the motives. The same impressive considerations relative to the honor, the dignity, the tranquillity and the prosperity of the state, which induced me at the last session to inculcate conciliation and harmony, and the union of all heads, all hearts and all hands in favor of the best interests of our country, exist still in undiminished force. The moderation and good feelings which now so generally prevail are the harbingers of a better state of things, which must eventually terminate in the restoration of that character, and of that just share of influence which have been greatly impaired by our intestine divisions; and I assure you that nothing will afford me higher satisfaction than to furnish in my own conduct, a practical illustration of the salutary and predominating influence of these high and momentous considerations.

DE WITT CLINTON.

Albany, January 3, 1826.

SPECIAL MESSAGES.

January 4. To the Senate: Transmitting resolutions adopted by the Legislatures of Vermont, Illinois, Delaware and Connecticut, approving the Ohio proposition relative to the abolition of slavery; and also a resolution from Dela-

ware disapproving the Georgia proposition relative to the importation or ingress of colored persons.

January 4. To the Assembly: Transmitting a communication from the Commissary General relative to artillery.

January 9. To the Assembly:

"Gentlemen.—I transmit a report of the directors of the Central asylum for the instruction of the deaf and dumb; and as the objects of this institution are laudable, and its administration appears to be judicious and beneficial, I have pleasure in recommending it to your favorable attention.

De WITT CLINTON."

Albany, January 9, 1826.

January 10. To the Senate: Transmitting a resolution adopted by the Legislature of Tennessee proposing an amendment to the Constitution providing for the election of President and Vice-President by a direct vote of the people. Each state was to be divided into a number of districts, equal to the number of its senators and representatives in Congress, and each district was to have one vote for the candidate receiving the highest number of votes in the district. The plan provided for certificates of election by districts, and a canvass of the returns by the Senate. The plan also provided for a new election in case no person should receive a majority of the votes. The amendment also included a provision making a member of Congress ineligible to any appointment by the President, except in the army or navy.[18]

January 11. To the Senate:

"Gentlemen.—I enclose a copy of a communication from the Secretary at War, relative to certain arrange-

[18] A Senate committee presented a report, disapproving the Tennessee proposition to elect the president and vice-president by a direct vote of the people, but no action seems to have been taken upon it in either house.

ments required in relation to the lands connected with the contemplated fortifications at New Utrecht. Of the reasonableness of this request there can be no doubt.[19]

DE WITT CLINTON."

Albany, January 10, 1826.

It appeared from the Secretary's communication that there was a misdescription of the land desired, and included in the cession act of 1825, and legislation was requested, rectifying the mistake.

January 14. To the Senate:

"GENTLEMEN.— By the constitution of the United States, it is provided that congress may 'exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings.'[b]

By this provision, it appears that the power of congress over the district of ten miles square, now the district of Columbia is exclusive; and that the cessions of the States of Virginia and Maryland have divested those states of all jurisdiction over that territory. The mode of ceding jurisdiction, as designated by the constitution, is the assent of a state to a purchase of land by the United States; but another mode has been generally practised, that is, by a legislative act expressly ceding jurisdiction, with a reservation of the right of serving civil and criminal process within the ceded territory. There can be no question respecting

[19] An act, chapter 248, was passed April 17, to correct the mistake in the description of the New Utrecht land.

[b] U. S. Const. art. 1, § 8, clause 17.

the time or the mode in which an assent to a purchase is expressed. If it be given contemporaneously or subsequently, or in direct terms or by necessary implication, its validity cannot be controverted; and a direct grant of jurisdiction necessarily involves such assent, and fully transfers to the United States all the authority of the State. The extent of the jurisdiction thus acquired is complete, and to all intents and purposes exclusive; and with the exception of reservations, all cessions of jurisdiction for the erection of forts, &c. to the United States, invests congress with the same power over the land ceded, as it possesses over the district of Columbia.

In the 3d volume of Wheaton's Reports, in the case of the United States v. Beavens, the court said: 'The place described is unquestionably within the original territory of Massachusetts, unless that jurisdiction has been ceded to the United States.' 'The power of exclusive legislation (which is jurisdiction) is united with cession of territory.'

No state, county or town regulations, can reach the place ceded, nor is any crime committed within it cognizable by the state courts. For crimes committed elsewhere, offenders may be pursued and apprehended within the cession, if the grant is coupled with this provision, but not for those perpetrated in it. The congress of the United States have accordingly, in the 'act for the punishment of certain crimes against the United States,' passed 30th April, 1790, provided for the punishment of the offence of wilful murder, and other crimes committed within any fort, arsenal, dock-yard or magazine, or in any other place or district of country within the sole and exclusive jurisdiction of the United States.

The design for obtaining exclusive jurisdiction, is the prevention of the embarrassments and perplexities of conflicting authorities, and particularly to preclude collisions with the essential requirements of military police, and also the operation of local and state taxation. Any extension

of cession beyond the needful objects, is a work of supererogation, and is not only an improper abandonment of state authority, but is incompatible with the spirit of the national constitution, which only contemplates such grants as are essential for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.

By a statute, entitled 'An act to cede the jurisdiction of certain lands in this state to the United States,' passed 20th March, 1807, and a supplementary statute, a board of commissioners was constituted, consisting of the Governor, Lt. Governor, Chancellor, Chief Justice, and Mayor of the city of New York, for the purpose of making such cessions. In the deliberations of that board, respecting the cession of the Battery in the city of New York, it was considered that great injuries might occur to that city by an absolute grant of jurisdiction; and accordingly in the deed dated 6th May, 1808, and signed by Governor Tompkins, Lt. Governor Broome, Chancellor Lansing, Chief Justice Kent and myself, as Mayor of that city, the following provision was included: 'Provided that this cession shall not be deemed to extend to prevent the execution of any process, civil or criminal under the authority of the said state, or to prevent the laws of the said state, or the ordinances of the common council of the said city, which have already been passed, or may hereafter be passed, for the general regulation of the civil police of the said city, and not incompatible with the purposes for which this cession is made as aforesaid, from extending to operate within the bounds of the lands, the jurisdiction whereof is, in and by these presents, ceded, and provided that such cession of jurisdiction shall cease and be null whenever the grant herein before contained, as to the use of the said three first described parcels of land, or any of them shall expire.'

I have considered it my duty to make these remarks, at the time of submitting to you a communication from the war department, for a transfer of jurisdiction of at least

1800 acres of land on the west side of Hudson's river, and pertaining to the military establishment at West-Point. The transcendent usefulness of the military academy, the distinguished merits of its officers, and the respectable source of the application, must form a strong claim on your efficient interposition in favor of any reasonable arrangements on this occasion. But it will certainly be unwarrantable to divest the county of Orange of its territory, and the state of its jurisdiction, to so great an extent. Although a ceded territory may, geographically speaking, be within a state, yet considered politically, and for the purposes of government, it is entirely extrinsic, and all connection is dissolved.[20]

De WITT CLINTON."

Albany, 14th January, 1826.

The letter from the Secretary of War contained the following observations relative to West Point:

"The post of West Point, besides being the deposit of military stores, is the site of the military academy. The course of moral and military discipline essential to the maintenance of the system established for the government of the post and military academy, as well as the troops and others belonging to the establishment, renders it highly desirable that the United States should possess the exclusive jurisdiction over the public lands, as considerable inconvenience has been experienced from the want of it, and there is great apprehension that there may be further interruption to the welfare of the institution."

January 16. To the Assembly:

"Gentlemen.— The appointment of most of the officers whose appointment is not provided for by the constitution,

[20] Chapter 64, passed March 2, ceded to the United States about 280 acres at West Point. The act reserved to the State jurisdiction as to the service of civil and criminal process.

is regulated by the 'act directing the mode of appointing certain officers whose appointment is not otherwise provided for by the constitution,' passed April 19, 1823; the duration of this act is three years. As the tenure of the offices held under it is for the period of one and two and three years, and several appointments have expired, by their own limitation, and others will soon expire, I submit to you the propriety of passing some law on this subject, whereby the appointing power, wherever it may be vested, may be exercised in due season.[21]

DE WITT CLINTON."

Albany, 16th January, 1826.

January 18. To the Assembly: Transmitting the annual report of the Commissary General.

January 20. To the Assembly: Transmitting the resignation of Henry Rutgers as a Regent of the University.[22]

January 23. To the Assembly: Transmitting a letter from the Secretary of State, enclosing a communication from the Assistant State Sealer containing information that in October, 1825, the building in which the standard weights and measures were kept, was consumed by fire, and the weights and measures totally destroyed.[23]

January 25. To the Assembly:

"GENTLEMEN.—I transmit to you several representations of the Seneca Indians, relative to their concerns, some of which are exclusively within the cognizance of the legislature, and some may be noticed in due season by the executive. As they are blended together, I have thought it ad-

[21] Chapter 59, passed February 25, revived and continued for three years the act mentioned in the Governor's message relating to appointments to office.

[22] Gulian C. Verplanck and Jesse Buel were appointed regents.

[23] The situation presented by the message was relieved by chapter 307, passed April 18, which directed the Secretary of State to purchase standard weights and measures for the assistant state sealer at Albany.

visable to submit the whole to you, in order that you may have a full view of all their grievances, and apply such remedies as your wisdom and humanity may prescribe.[24]

De WITT CLINTON."

Albany, 25th January, 1826.

January 28. To the Assembly:

"Gentlemen.—I enclose a proposal from Mr. Peale, an eminent artist, to furnish the state with a portrait of General Washington; and I trust that you will excuse me for laying this communication before you, as it relates to the father of our country.

I avail myself of this occasion to state, that I expect, in a few days, a portrait of General La Fayette, which will close the proceedings under the act in honor of that distinguished hero. I shall then direct a statement of the expenses incurred under that act to be laid before you, for your information. [See note 13.]

De WITT CLINTON."

Albany, 28th January, 1826.

January 31. To the Senate: Transmitting a resolution adopted by the Legislature of Kentucky disapproving the Georgia proposition relative to the importation or ingress of colored persons.

February 7. To the Assembly: Transmitting a copy of a treaty with the Oneida Indians, made the 1st day of February.[25]

February 17. To the Assembly: Transmitting the annual report of the Adjutant General.

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[24] Chapter 150, passed April 11, prohibited the sale or giving away of intoxicating liquors to Indians.

[25] By chapter 304, passed April 18, the treaty made with the second Christian party of the Oneida Indians on the 1st of February, 1826, was ratified, and provision was made for disposing of the land acquired by the treaty.

February 23. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

February 24. To the Senate: Transmitting resolutions adopted by the Legislature of Indiana disapproving the Tennessee proposition to elect the president and vice-president by direct vote of the people, and making a member of Congress ineligible to civil appointments by the president.

March 1. To the Senate: Transmitting a resolution adopted by the legislature of Maine disapproving the Tennessee proposition relative to the election of president and vice-president and the eligibility of members of Congress to civil appointments.

March 1. To the Assembly: Transmitting the annual report of the inspector of flour and meal for the counties of New York and Kings.

March 2. To the Assembly:

"GENTLEMEN.— At the request of the respectable president of the American Colonization Society, I transmit to you a memorial from that benevolent and meritorious association, under a full persuasion that it will receive from you all the attention to which it is entitled, from its high character and important objects.

DE WITT CLINTON."

Albany, 2d March, 1826.

The journal does not contain the memorial.

March 3. To the Assembly: Transmitting the annual report of the Bank for Savings in the city of New York.

March 10. To the Senate: Transmitting a resolution adopted by the Legislature of Mississippi disapproving the Ohio proposition relative to the abolition of slavery, and also the New Jersey proposition relative to the colonization of colored persons.

March 11. To the Assembly: Transmitting a report from the Commissary General relative to artillery, in response to an Assembly resolution requesting information on that subject.

March 14. To the Assembly:

"Gentlemen.—I transmit to you a report of the agent of the state for the settlement of its demands against the United States, under the act of the 10th of February, 1818. There are suggestions in this report which require your immediate attention, especially as an application to Congress will be necessary, in order to procure an adjustment on just and liberal principles, and to provide for cases not embraced by any existing laws.[26]

De WITT CLINTON."

Albany, 14th March, 1826.

The Assembly journal contains Mr. Hammond's report.

March 20. To the Senate: Transmitting a resolution adopted by the Legislature of Louisiana approving the Georgia proposition relative to the importation or ingress of colored persons.

March 27. To the Senate: Transmitting a resolution adopted by the Legislature of Louisiana disapproving the Ohio resolution relative to the abolition of slavery.

April 1. To the Assembly:

"Gentlemen.—It sometimes becomes necessary in extraordinary cases, to employ counsel to assist the district attornies under an impression that there is an adequate

[26] The legislature passed a concurrent resolution requesting senators and representatives in Congress from New York, to use their best endeavors to procure a settlement of the claims of the State against the United States. Chapter 201, passed April 15, made an appropriation for the compensation of Jabez D. Hammond and Salem Dutcher, Jr., for services performed in settling the claims of the state against the United States.

provision for compensation, but doubts now exist whether it is authorized by law. In civil suits it sometimes occurs that the attorney general, owing to the multiplicity and pressure of other duties is not able to attend. I therefore recommend that suitable provision be made in these respects, and that it be of a retrospective character, so as to embrace a few meritorious cases wherein a compensation is required by justice. On this subject I submit a communication from the Attorney General, and also refer you to a report of that officer, on the journals of the Assembly of 1824, page 830.

DE WITT CLINTON."

Albany, April 1st, 1826.

April 10. To the Assembly:

"GENTLEMEN.—The expenses incurred in the execution of the act in honor of General La Fayette, amount to three thousand eight hundred and fifty-two dollars, and thirty-two cents; and the amount and vouchers are deposited in the offices of the Comptroller and Treasurer. $675 of this sum were expended under the first section, and the remainder under the second section of the act.

DE WITT CLINTON."

Albany, April 10th, 1826.

[See 1825, note 24.]

April 11. To the Legislature:

"GENTLEMEN.—I submit to you an overture, from Mr. Astor, just returned from Europe, for an amicable arrangement of his claims on the confiscated lands denominated the Morris lots, in Putnam and Dutchess counties. As this course will produce a more prompt decision than any other, will afford equal justice to all the parties, and tend to a speedy relief of the inhabitants of that region from the

apprehensions and embarrassments under which they now labor, I respectfully recommend it to your deliberate consideration. [See note 10.]

De WITT CLINTON."

Albany, April 11, 1826.

Mr. Astor suggested that the matter be referred to three non-residents, one to be selected by the State, one by himself, and the third by the referees so named, or else that the claim be submitted to the Supreme Court of the United States for final determination.

April 18. To the Assembly:

Veto of a bill entitled "An act to amend an act entitled 'An act regulating the manufacturing of salt in the town of Salina,' passed April 21, 1825."

"I have this day received the bill, entitled 'an act to amend the act, entitled "an act regulating the manufacturing of salt in the town of Salina," passed April 21, 1825, and regret that the contemplated adjournment of the legislature, in a very short time, will prevent me from bestowing that consideration upon it, which its importance merits; but from the view that so short a period enables me to take. I consider it my duty to return it, and to object to its becoming a law, for the reasons which I now respectfully submit.

First — The salt springs of Onondaga county are a cardinal interest, which ought to be placed in such a state of management and security, as to prevent an application of them to private uses incompatible with general interests, to foster and protect the revenue, and to enable the community at large to receive the best accommodation in the supply of an essential article. With this view the constitution has declared, that 'the legislature shall never sell or dispose of the salt springs belonging to this state, nor the

lands contiguous thereto, which may be necessary or convenient for their use.'[c] By the fifth section of the bill the superintendent is authorized to sell at public auction, for twenty-one years, the buildings known as the superintendent's house and the public store, together with a right to a lease of such parts of north and south store lots on which the buildings respectively stand, as have not heretofore been leased — which lease shall contain a clause authorizing the lessee or lessees to erect on the premises salt manufactories, or hydraulic machinery, or both, at his or their option.

These two lots are two of the original lots laid out by the Surveyor General, in 1797, agreeably to the 'act concerning the salt springs in the county of Onondaga,' passed the 1st of April, 1797, and they are expressly classified by Judge Throop, in his decision on the appeal to him, (a copy of which decision is annexed to the report of the superintendent, inspector and engineer, to the legislature in February last,) as part of class number one, and must be considered as clearly within the description of the constitution, as lands contiguous to the salt springs, and as necessary or convenient to their use. They were expressly laid out as necessary and convenient for that purpose, and by the decision of Judge Throop, they are in the class first entitled as manufacturing lots, to the salt water to be drawn from the wells belonging to the state. They cannot therefore be sold for any other purpose than that of manufacturing salt, either in perpetuity or temporarily, without a violation of the constitution.

Second — The proper management of the salt springs involves such a variety of functions, comprises so many objects and affects so many interests, that it has been a subject of constant contention and multifarious legislation, and the consequences have been very injurious to individ-

[c] Const. 1821, art. 7, § 10.

uals and the community. The various regulations on this subject were, on the 21st of April last, embodied in one act, with several improvements, additions and retrenchments; and it is believed that an excellent system was established to ensure the most beneficial objects.

A board was instituted, consisting of a superintendent, inspector and engineer, with a general supervision of the concerns of the salt springs, and the exclusive functions of these officers are distinctly defined.

1. The engineer is to see to the raising of the salt water, and its proper distribution among the manufacturing establishments and the four villages.

2. The inspector is to examine the salt manufactured, and to see that its quality is good, and its quantity when put up, within the requirements of the statute.

3. The superintendent is to take charge of the public lands, and to receive and pay over the duties.

This arrangement appears to be very judicious, and well calculated to realize the views of the legislature; but before the lapse of a year, it is proposed, by the bill, to abolish it in part; to destroy an office of essential importance, and to transfer its functions to the superintendent, whose duties are already onerous, and who cannot devote that attention to such various and additional objects which is due to the public good, and which is required by the present bill.

The system is now in a train of successful experiment, and it ought not to be, at the present time at least, altered in its essential features. Innovation is not always improvement, and frequent changes in our laws may produce injurious consequences not anticipated, and actual benefits may be sacrificed for ideal advantages. Until it shall be found in the progress of time, that the present system requires improvement, and until experience shall evince the expediency of legislative interposition, it will certainly be most advisable to abstain from it.

Lastly. The bill makes no provision for paying the demands due for labor performed, and materials furnished at the request and under the direction of the engineer, thereby inadvertently depriving the laborer of his hire, and violating the faith of the state, pledged through its authorized agent."

The bill was not passed over the veto.

April 18. The Legislature adjourned without day.

REPORT ON PROPOSED AID TO ROBERT FULTON'S HEIRS.

The part of the Governor's message relating to the children of the late Robert Fulton, *ante*, p. 134, was referred to a select committee of the Assembly. That committee considered the subject, and in its report, presented on the 7th of March, said:

"They have bestowed upon it all the examination and reflection to which the nature of the communication is so well entitled, and have become satisfied that Robert Fulton, after having devoted a large portion of his life to those experiments which have resulted in such honor to himself and usefulness to his country, died, leaving his wife and children nearly destitute; and the committee are then necessarily led to consider the claims which the wants and poverty of these children have upon the munificence of the state of New York.

The committee do not feel themselves bound to enter into the inquiry, how far Mr. Fulton may be entitled to the credit of having first suggested the plan of propelling boats by steam; but content themselves with remarking, that to him at least belongs the reputation of having made the first practicable useful experiment; that upon him would have fallen the loss of another abortive attempt; and that the fact, that former unsuccessful experiments had been made,

so far from detracting from his well earned fame, increases their admiration for that genius and boldness which, not deterred by former failures, persevered to complete success. And the committee, in regarding this among the many contributions of this country to the prosperity of mankind, may be indulged in expressing the pride they have felt in the tribute that has been paid to his memory by a learned foreigner, who, in discussing the claims of others, observes, 'that the application of steam to navigation had been thought of by all artists, but the means of executing it were wanting, and Fulton furnished them.'

The committee would respectfully call the attention of the house to the former acts of the legislatures of this state, representing, as these acts do, the feeling of those who passed them, as to the services Mr. Fulton had rendered, and forming some portion of the claim which his children now have upon the justice of this state. It will be seen by a reference to the act of 1808, that the legislature, following up a system commenced as early as 1787, gave to Mr. Fulton, for his indemnity and reward, and as an inducement for him to persevere in perfecting his plans, certain exclusive privileges for a limited time; and the committee advert with pride to the fact, that the faith of the state, so pledged, has not only been protected by a series of judicial decisions in her courts, but was signally manifested and preserved by the solemn act of this house in 1814, after a deliberate examination into his claims, upon a petition which was presented for a repeal of the laws that granted to him these privileges. And although the committee do not mean to be understood as saying, that the contract that may be considered thus to have been made between him and the state, was such an one as would entitle his representatives to demand a remuneration as a matter of right; yet the circumstances under which this act was passed, and the security with which it invested the application of all the early profits of his boats for their further improvement,

present, in the opinion of the committee, when the state can no longer execute the terms of this act, at least strong claims upon her magnanimity and benevolence. And the committee would further state, that relying on 'the strength of his rights and the sanctity of the obligations on which they were founded,' he contracted in his noble pursuits a load of debt, which has fallen upon his children, and deprived them of all patrimony but the illustrious name of their father.

The committee, in closing their report, would further observe, that when they recall to the memory of the house, that Mr. Fulton was one of the earliest champions of the great scheme of internal improvements that has progressed with such profit and glory to the state, and that by his writings and the weight of his character as a civil engineer of acknowledged experience, he was one of its most efficient advocates; when they contemplate his unceasing exertions during our war, for the defence of his native land; when they consider that his invention has increased the general wealth of the state, and raised the value of the property of her citizens; but above all, when they regard it by the means it affords for an easy and mutual intercourse among the citizens of the different states, as adding strength to the chain that binds us together as a free and united people, they cannot but believe that they will be supported by the judgment of the house, when they pronounce Robert Fulton a Public Benefactor; and that the regret they feel will be shared by all, that the wife and children of such a man should be compelled to appeal to public sympathy for their support. But such, the committee would again repeat, is the fact; and believing that they need and deserve the aid they ask from the liberality of the state, they have directed their chairman to ask leave to introduce a bill, appropriating a sum of money in blank, to be properly secured for the use and benefit of the heirs of Robert Fulton."

No bill was passed.

De WITT CLINTON, Governor.

FIRST MEETING.

The Legislature met on the 2d of January, and on the same day received from the Governor the following

ANNUAL MESSAGE:

FELLOW CITIZENS OF THE SENATE, AND OF THE ASSEMBLY.—A review of the last year must excite the deepest emotions of gratitude to the Almighty Dispenser of all good, for the signal blessings conferred on this community. In every direction we perceive the footsteps of growing improvement and progressive prosperity. In the erection of new and the augmentation of old villages, towns and cities, we recognize the animating spirit of easy communication and the wide spreading advantages of internal trade. This increase of our markets will necessarily create a dispensation and interchange of benefits, that must be felt in every operation of labor and in every department of industry. The commercial gloom, which was some months since spread over the civilized world, has, in a great measure, disappeared; and it is to be hoped, that learning wisdom from experience, and moderation from adversity, we will never again witness a recurrence of a spirit of overweening speculation and over reaching cupidity, equally injurious to good morals and social prosperity.

As a component part of a great federal republic, it is our incumbent duty to support the general government in all its measures that are worthy of support, to cultivate amity and good will with our confederates, and to discountenance all tendencies to overthrow by consolidation, or to destroy by dismemberment our admirable systems of government. Peace with all the world is with us a primary duty and a

cardinal interest. Whatever may be the aspect or whatever the direction of our foreign negotiations, there is no reason to apprehend any change in our pacific relations, nor can we imagine the possibility of any diplomatic involutions that may place us in a position from which we cannot advance without danger nor recede without disgrace. Powerful in defensive and ill adapted for offensive war; calculated by position, destined by interest, and enjoined by duty, to be a pacific nation; we must sedulously abstain from entangling or identifying ourselves with the political arrangements of other nations. In relation to our domestic concerns, the path of duty is equally plain. We have only to pursue the same policy which has conducted us to opulence and established our prosperity and reputation on imperishable foundations.

Another attempt as futile as the former, has been made by a custom house collector in the west to apply the revenue laws of the United States to the navigation of the Erie canal. It does not appear that this proceeding has received any countenance from higher authorities, nor can it for a moment be believed that a claim so preposterous in its assumptions and so pernicious in its results, would at any time be encouraged in any quarter. As the spirit of internal improvement is rapidly extending in every direction, it has become a question of great moment, whether the general government has power, with or without the consent of the state governments, to construct canals and roads in their territories, and whether such power, if not already vested, ought not to be granted? High authorities are to be found on both sides of this question; and after devoting to it all the consideration to which, from its importance, it is entitled, I think it due to a sense of duty and a spirit of frankness to say that my opinion is equally hostile to its possession, or exercise by, or its investment in the national authorities, I can perceive in it nothing less than the harbinger of certain destruction to the state governments, nor

can we but see that it at once breaks down the barrier between a government for national or exterior affairs, and local governments for domestic or interior concerns. As well might congress take cognizance of agriculture, common schools, universities, penal codes, civil rights, and the whole range of local and internal regulation, as of roads and canals. As however, the general government is possessed of the national domains, and has exclusive authority over the most productive sources of revenue, I believe that the power of distributing the necessary funds among the several states for objects of public improvements, ought to be incorporated in the constitution, if not recognized as already in existence.[1]

While on the subject of amendments to our national constitution, I cannot but express my regret that the enlight-

[1] The Governor's suggestion as to the federal distribution of public funds, which was in effect embodied in a resolution received from Maine, see special message of April 4, was considered by a Senate committee in connection with the Maine resolution. Referring to the possible assumption by the federal government of power over internal communications among the States, and especially the power to collect revenue on canal business, the committee said it could not but view with great alarm the consequences of the exercise of such a power. "By its means the great work which this state has undertaken unaided, and completed unaided, might easily be rendered abortive and useless, and the revenue which should discharge the debt incurred for its construction, may be turned into the treasury of the United States. This is selected, not as a probable instance of the exercise of the power, but as a striking and familiar illustration of its dangers. Every day furnishes fresh evidence of the tendency of the general government to absorb and control the powers and interests of the states. Not a case has yet been presented to that tribunal which has been organized by the government of the United States for the decision of such questions, in which the powers exercised by the states have not been questioned or denied, and not a case in which any power claimed by the general government, has not been recognized and admitted. The fact is surprising, although it should not lead us to doubt the purity and integrity of those who pronounced the decisions; but it admonishes us to beware how we sanction the exercise of doubtful powers, since in the short period of our history, example has so soon become precedent."

The committee advocated the policy of distributing surplus revenue among the States for the purpose of fostering internal improvements and education, and accordingly recommended the adoption of a resolution concurring with the Maine proposition in relation to such a distribution of public revenues.

ened and magnanimous views of this state, in relation to the choice of President and Vice-President have not been realized. Our overture was to establish an uniform rule of choosing electors by the people and by districts. In committing this power to the people, it vests it in its appropriate depository, the legitimate sovereign of the country, diminishes the chances of corruption, and the dangers of foreign influence, destroys the evils of pre-existing bodies for the election of the colleges, and prevents combinations of a few great states to create by their own power the national chief magistrate. The provision is perfectly safe, unless the people be venal and profligate, and then liberty is in all cases without protection, and free government without hope. It is fair and equal, if it be uniform, but without insertion into the constitution, it will subvert a just representation of power. I am persuaded that as the legislature of a great state, you feel above the influence of any considerations connected with an invidious and dangerous assumption or exercise of power. The great states will always possess an influence correspondent with the most extensive combinations of moral and physical power, unless they become the dupes of extraneous intrigue or the victims of internal agitation; and they therefore ought to abdicate all pretensions and avoid all associations calculated to excite the jealousy, or diminish the just rights of the minor members of the confederacy.

A controversy much to be regretted has existed for some years between our sister New Jersey and us. Our claim of jurisdiction and territory reaches to low water mark, on the west side of the Hudson and the Sound that separates Staten Island from New Jersey, while the adverse title extends *ad filum aquae.* In 1807 this controversy was submitted to negotiation, which terminated with more precipitation than good temper, and without any favorable result. Subsequently, and in the same year, New Jersey passed an act for the protection of her claims, and imposing severe

penalties. During the following year, New York passed a law of retaliatory character, but not so penal in its inflictions. Our act of 1798, was not intended to refer to New Jersey. It was passed during the administration of the venerable and highly respected Governor Jay, and a long time before the agitation of this controversy. Its object was to bear on a title derived from another state, absurd in itself, indefensible in all respects; injurious to the increase of our population, and perplexing to our citizens; and the law had the contemplated effect. In 1825 an attempt was made to adjust this controversy, by instituting a new board of commissioners, clothed with authority to negotiate subject to ratification, and a law was enacted for the purpose by New Jersey; a correspondent bill passed the senate unanimously, which owing to an inexplicable opposition, was so long procrastinated in the Assembly that it was merged in unfinished business; since which period, this controversy has assumed a more serious aspect. A ministerial officer of this state has been arrested in New Jersey, for serving process within the disputed jurisdiction; and he is liable to incarceration in a state prison. I consider it due to the comity that ought to exist between independent communities, to the amity which ought to be cherished by bordering and confederate states, to a sense of justice, magnanimity and self-respect, to allay the exasperated feelings which prevail, and to close with a negotiation again agreed to by our sister republic. I shall transmit to you, in due time, the documents which relate to this subject.[2]

The precarious and uncertain condition of the elective franchise, depending more on the volition and agency of assessors, collectors, militia officers, and road masters, than on a fixed and certain tenure, rendered it necessary that defects so glaring and dangerous should be removed by

[2] By chapter 299, passed April 16, commissioners were appointed to act with New Jersey commissioners appointed for the same purpose in negotiating a settlement of the boundary dispute.

constitutional amendment.[2] In 1825 I called the attention of the legislature to this subject, and I now have the satisfaction to announce that the right of election has been established on a firm and certain basis, the amendment for that purpose having received the sanction of the two last legislatures, and the almost unanimous vote of the people. As the right of suffrage composes the essence of freedom, and is the vital and characteristic principle of representative government, it ought to be fortified against corruption, illuminated by knowledge and shielded by moral and political virtue. Our elections, which have occupied three days, and occasioned much contention, many irregularities and some flagrant violations of rectitude, may now be compressed within a shorter period and conducted with more regularity and purity. Lists of the qualified voters in each town may be periodically compiled, and resorted to as conclusive evidence of a right to exercise the elective franchise in a particular place, by which means partiality, fraud and perjury may be prevented. Severe restraints ought also to be established against the pernicious practices of employing hirelings to bring up votes — of beleaguering the polls to the annoyance or exclusion of aged, infirm and orderly citizens — of dispensing donatives or largesses of any kind to influence votes, or of employing any means of intimidation or corruption that may affect the purity and independence of the elective franchise.[3]

But after all, the great bulwark of republican government is the cultivation of education, for the right of

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[2] Const. 1821, art. 2, § 1; Am. 1826.

[3] The first part of the Revised Statutes, which was passed in December, 1827, contained detailed provisions regulating elections, including the qualifications of voters as prescribed by the amendment of 1826. General elections might still be continued three days, but special elections were limited to two days.

At the regular session, by chapter 179, passed April 7, the existing election law was amended by adding provisions for the election of justices of the peace to comply with the constitutional amendment of 1826.

suffrage cannot be exercised in a salutary manner without intelligence. It is gratifying to find that education continues to flourish. We may safely estimate the number of our common schools at eight thousand, the number of children taught during the last year, on an average of eight months at four hundred and thirty thousand, and the sum expended in education at two hundred thousand dollars. It is however too palpable that our system is surrounded by imperfections which demand the wise consideration and improving interposition of the legislature. In the first place there is no provision made for the education of competent instructors; of the eight thousand now employed in this state too many are destitute of the requisite qualifications, and perhaps no considerable number are able to teach beyond rudimental instruction. Ten years of a child's life from five to fifteen may be spent in a common school, and ought this immense portion of time to be absorbed in learning what can be acquired in a short period? Perhaps one fourth of our population is annually instructed in our common schools, and ought the minds and morals of the rising and perhaps the destinies of all future generations to be entrusted to the guardianship of incompetence? The scale of instruction must be elevated; the standard of education ought to be raised — and a central school on the monitorial plan ought to be established in each county for the education of teachers, and as exemplars for other momentous purposes connected with the improvement of the human mind.[4] The trustees of the public school society of New York, have issued a prospectus for the establishment of a central school in that city, wherein are to be taught for the

[4] Chapter 228, passed April 13, which regulated and increased the common school fund and the literature fund, made additional provision for classical instruction in academic institutions. The persons for whose instruction academies and seminaries were entitled to an extra allowance were not classified as teachers, but the required degree of proficiency was prescribed by the act, which according to its title was especially designed to improve the qualifications of teachers.

education of teachers, natural philosophy, practical mathematics, mercantile arithmetic, bookkeeping, and the outlines of natural science. A school on a similar plan, and embracing a variety of important objects, has been founded by some enlightened and public spirited citizens in Livingston county, and there is reason to hope that these meritorious exertions will be crowned with complete success. I cannot speak in terms of sufficient praise of these most laudable attempts nor recommend them too emphatically to public patronage and general imitation. Small and suitable collections of books and maps attached to our common schools and periodical examinations to test the proficiency of the scholars, and the merits of the teachers, are worthy of attention; when it is understood that objects of this description, enter into the very formation of our characters, control our destinies through life, protect the freedom and advance the glory of our country; and when it is considered that seminaries for general education are either not provided in the old world or but imperfectly supplied by charity and sunday schools, and that this is the appropriate soil of liberty and education, let it be our pride, as it is our duty, to spare no exertion and to shrink from no expense, in the promotion of a cause consecrated by religion and enjoined by patriotism. Nor let us be regardless of ample encouragement of the higher institutions devoted to literature and science. Independently of their intrinsic merits and their diffusive and enduring benefits, in reference to their appropriate objects, they have, in a special manner, a most auspicious influence on all subordinate institutions. They give to society men of improved and enlarged minds, who feeling the importance of information in their own experience, will naturally cherish an ardent desire to extend its blessings. Science delights in expansion as well as in concentration; and after having flourished within the precincts of academies and universities, will spread itself over the land, enlightening society and

ameliorating the condition of men. The more elevated the tree of knowledge and the more expanded its branches, the greater will be its trunk and the deeper its root. Simultaneously with the improvement of the constitution relative to the elective franchise, another amendment was adopted, committing the choice of justices of the peace to the people.[b] These appointments have been considered as intimately connected with political influence from the earliest periods of our history. Under the colonial governors, they were made not so much with a view to fitness as to the support dispensed to friendly members of the Assembly. Under the council of appointment these offices depended on the fluctuations of party ascendency; and under the new constitution a complex system was established, which ostensibly created an appointing power in every county, but in reality brought the substance of it home to the seat of government; and it was attended with the political solecism of not only converting the county judges into a co-ordinate appointing power, but of investing them with authority to remove their associates in the general sessions from office, while sitting on the same bench. The people are at last possessed of the right of choosing their own local magistrates, and the appointment of nearly three thousand offices is thus placed in the proper depository. The common place objection of the dangers of an elective judiciary can have no weight in its application to this case. The aldermen of New York and Albany who are *ex officii* judges of the county courts, have been elected from the first foundation of those cities, and no just imputation has been made on that account against the honest and independent exercise of their functions. Your attention will of course be afforded to such legislation as may be requisite to carry these important improvements into full effect.

[b] Const. 1821, art. 4, § 7; Am. 1826.

The charter of the New York Historical Society, which had expired by its own limitation, was renewed at the last session, but without the pecuniary aid that was solicited and which would have been worthily bestowed, considering the light which its researches and collections have shed on the history of America in general, and of this state in particular. It appears that the society has recently procured and published a manuscript continuation from 1732 to 1762 of Smith's History of this province.[5] The translations of our Dutch Records, at the public expense, by the learned Doctor Vanderkemp, have opened sources of historical information, which were before locked up in a language little known and in manuscripts scarcely legible. In 1814 the Historical Society addressed a memorial to the legislature, wherein it indicated several places for important acquisitions. In the office of the board of trade and plantations in England, in the British Museum, and in the library for the Society for the Propagation of the Gospel in America, books and manuscripts of great moment relative to our history may be found. And it would be very useful to obtain transcripts of all publications and documents in those quarters, which may elucidate our annals in their aboriginal and colonial state.

An authentic and official map of the state is a desideratum which ought to be supplied, and this is suggested without any disparagement of the laudable attempts which have been made by individuals for that purpose.[6]

The provision made at the last session, for the extension and support in the City of New York, of the House of Refuge for juvenile delinquents, has been faithfully and

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[5] Chapter 51, passed March 1, authorized the comptroller to expend $5000 in payment of the debts of the New York Historical Society provided that sum would discharge all the debts.

[6] Chapter 2, passed at the second meeting, October 17, provided for a purchase of a map of the state to be made by David H. Burr, and also for the distribution of the maps to the several towns, reserving a number for the use of the state. The act specified the contents of the maps.

beneficially applied. A separate and accommodating building has been erected for females and schools on the monitorial plan have been successfully established. The institution now contains one hundred and thirty-one males, and thirty females, who have been rescued from the most abject debasement — and preventive as well as remedial in its influences, it must be considered a noble as well as successful experiment in favor of humanity. All, however, will depend on a continuance of able superintendence, and it is hoped that the philanthropic men who have gratuitously and perseveringly devoted themselves to this great work, will not relax in their exertions. Instances have occurred where the most abandoned youth, after having experienced the moral purification of the House of Refuge, have encountered the dangerous exposures of a maritime life without the least detriment to their good habits. It is to be regretted that some very young convicts have been sentenced in the counties to the state prison when they ought to have been sent to this penitentiary, and it appears that a conviction recently took place in the circuit court of the United States when the criminal was a proper subject for the latter, but that this designation could not take place, as the law allowing the use of our prisons and penitentiaries for offenders against the United States only applies to commitments before trial. This is an accidental omission and ought to be rectified.[7] It is gratifying to observe the increasing attention to institutions of this kind in other states and the probability of their extensive establishment, and it is also gratifying to know that nothing has been done in favor of the House of Refuge which has in the remotest degree interfered with the interests and concerns of our quarantine establishments; all its needful requirements have been amply satisfied, and besides the payment of all

[7] United States prisoners were, by chapter 52, passed March 5, to be received into state prisons and penitentiaries, and might be sentenced accordingly.

its expenses, an extensive brick hospital with other useful erections, is in a train of completion.

The debt created by the construction of the Erie and Champlain canals and subsidiary works amounts to seven million nine hundred forty-four thousand seven hundred and seventy dollars and ninety cents, paying an interest of six and five per cent. The interest on the whole is $427,673.55 per annum; and the fund applicable to the extinguishment of this debt, will it is believed, amount this year to..... $1,057,558.46

To wit.

From tolls.....	771,780.10
From auction duties for the fiscal year, ending 30th November last.....	200,737.84
Salt Duties	77,405.33
Other sources.....	7,635.19

By the constitution, this fund cannot, nor ought it to be diverted from its designated object.[c] This state has derived great reputation from its enterprise in undertaking, and its perseverance in executing a work of immense benefit, and it ought to set another example of the extinguishment of a great public debt. This precedent will be more beneficial in itself and more animating in all its aspects and consequences, than any fugitive or even permanent advantages that can emanate from another course. In the mean time we must feel certain that this important object will be soon accomplished and we can safely make prospective calculations accordingly. The primary object of all improvements which create and facilitate communication by land or water, is the public accommodation and the promotion of internal commerce. Revenue, although a desirable, is only a secondary inducement, and whenever a collision arises, the subaltern must, as in all other instances, yield

[c] Const. 1821, art. 7, § 10.

to the principal consideration. The standard, by which all operations of this kind ought to be regulated, is the public ability to sustain the expense; and although income may enter into the consideration of that question, yet when the capacity may exist without reference to the proceeds of a work erected for the general accommodation, the resulting avails can never be the controlling inducement; and it ought always to be emphatically understood that the expenditure of public money in works of utility, enriches the country in which it is applied, increases its ability to defray the public burdens, establishes profitable markets in all directions, enhances the value of land, augments the amount of capital and rewards the exertions of industry and the exhibitions of ingenuity. In times of pressure, no relief can be more effectual, and the experience of the country through which the western and northern canals were constructed, evinced the absence of those distresses, which for a considerable portion of the time, were felt in almost every other quarter. The funds thus employed, circulate from the extremities to the heart of the body politic, quickening the movements of labor, animating the operations of capital, and augmenting the productions of industry.[8]

Our canals have been principally made by the state, and our roads by incorporated companies, by individuals, by towns and counties, and by the state at large. In those improvements which are to be achieved in future, there will undoubtedly be full scope for all these sources of contribution, and they will demand all the united efforts of our disposable capital and labor. The canals which now principally occupy the public attention, embrace a navigable union of the principal bays on Long Island — of the Hudson and Delaware Rivers — of the Erie canal with the East and West branches of the Susquehannah, with the Allegany

[8] Canal legislation at this session included several general laws, and also local and private acts.

River, with Lake Ontario by Great Sodus Bay — with Black and St. Lawrence rivers; and between the latter river and Lake Champlain, and even a canal from Lake Erie to the Hudson River by an entire new route, has been suggested as practicable and expedient and urged with great earnestness and energy. Of all the operations which have been conducted by incorporations, there is none entitled to have more commendation and public favor than the canal constructed by the Delaware and Hudson Company, comprising a distance of sixty-three miles from the Delaware to the Hudson river. This work will be navigable at the opening of the spring, embraces 61 locks, besides culverts, aqueducts, bridges and other necessary appurtenances. It was commenced in August, 1825, and was performed with great economy as well as skill, and at an expense below the estimate. There still remains to be executed about twenty miles from the point where the canal strikes the Delaware along the valley of that river, to the mouth of the Lackawaxen. From thence it is contemplated to have a communication to the anthracite coal beds, from which coal in any quantity, and of excellent quality may be brought along this route and delivered at the towns on the Hudson, for three dollars and nine cents a ton. It is supposed that a canal might be continued from the termination of this at the confluence of the Lackawaxen and Delaware, to Deposit on the latter river a distance of sixty-six miles, and from thence to Bettsburgh on the Susquehannah thirteen miles; from which place on examinations instrumental and personal, it is understood that a good navigation might be effected along the valleys of the Susquehannah and Tioga, and of the branches of the latter as far west as Hornellsville in Steuben county, forming a continuous line of canal 230 miles at least; and it is believed that this navigable communication may be extended to Portland on Lake Erie, and to Pittsburgh at the head of the Ohio. But it is sufficient to say that this canal considered without any reference to its

extension is of vast importance in the accommodations which it will afford and as such it is entitled to your countenance. In what precise shape this ought to be manifested, will of course be a subject of your wise deliberations.[9]

I have great pleasure on this occasion, of recommending to your favorable notice, a company which was incorporated on the 9th of April, 1824, by an act entitled "an act to incorporate the Orange and Sussex Canal Company." The object of this corporation is to form a navigable communication between the Hudson near Newburgh and the Delaware near the Water Gap, and which it is conjectured may be extended to the Susquehannah. The state of New Jersey has passed a concurrent act of incorporation. The whole distance is about 88 miles. The ascent from the Hudson to the summit level is about 430 feet, from whence the descent to the Delaware is 207. The whole line is through a spacious valley formed by a continuation of the Catskill Mountains on the one side and of the Highlands on the other. This region is replenished with valuable minerals and lumber of all kinds and its abundant fertility is conceded. The only question that can exist as to the feasibility of this project, is as to a sufficient supply of water at certain periods, but it is highly probable that the pending examinations will dissipate all apprehensions in this respect.

There are five routes proposed between the Erie canal and the Susquehannah River, to wit: from the head of the Seneca lake to the Tioga or Chemung River, from the head of Cayuga lake to Owego; by Otsego lake, by the valley of the Chenango River, and from Manlius through Pompey and thence to Chenango Point. Five communications are also contemplated between the same canal and the Allegany

[9] The Delaware and Hudson Canal Company received aid from the State to the extent of $500,000 by chapter 62, passed March 10, which authorized the issue of state stock for that purpose.

river; by the valley of the Genesee to Olean Point — by that of Tonnewanda to the same point, and also from Buffalo to the same place by Buffalo Creek; Lime Lake and Ischua Creek; by the valley of the Conewango and by Lakes Erie and Chautauqua. Several routes have been indicated and some explored from the Erie canal to the St. Lawrence and the practicability and utility in particular of a canal from Rome through Boonsville or Camden to Ogdensburgh are put beyond all doubt. I have heretofore had occasion to speak in the most favorable terms of some of these projected communications, and time and inquiry have confirmed my impressions.

Bituminous coal of good quality surrounded by approved iron ore, is found in the greatest abundance and can be procured with little expense in Pennsylvania about twenty miles from the line of this state, and as soon as the Seneca Lake is united with the Tioga may be conveyed to this city for about seven dollars a ton. It is due to justice to state that the prominent objection made last session against the Chenango canal is completely prostrated, for a scrutinizing examination has demonstrated that a plenary supply of water can be obtained at all seasons. Anthracite coal from Belmont in Pennsylvania can be obtained through this channel and strong indications exist of the presence of coal in Oxford; there can be no doubt but that a productive revenue will be derived from the conveyance particularly of that fossil, salt and gypsum. I shall not however trespass on your time by entering more into detail. But permit me to remark that the expense of such operations may be greatly diminished by the adoption of wooden locks in forest countries and of inclined planes in hilly regions. From the experiments already made there can be but little doubt of the successful substitution of the latter. I submit the whole subject to your enlightened and patriotic consideration, not doubting but that you will view it in all its attitudes and bearings and with a full determination to dis-

pense such encouragement as may be authorized by the merits of the projects and by the resources of the commonwealth, and with a judicious view of prospective as well as present considerations, and of all the beneficial combinations and consequences that must necessarily flow from extending the sphere of our improvements, and exciting into activity all the springs of productive industry.

It is presumed to be a general rule of easy application and execution, that the cost of the repairs and superintendence of a canal ought not to exceed one tenth of its gross revenue. Whether this is the case with us is not easily ascertained, because the expenditures for repairs and new erections are probably in some instances mixed together. But I am persuaded that a system of precautionary economy and considerable retrenchment might be adopted greatly to the advantage of the canal fund and in favor of other improvements. Complaints are made, and I have no doubt with good cause in several instances, of the high rates of toll, as having a discouraging influence on our trade; if high, they may have a prohibitory effect, and prevent entirely, or for certain distances, the transit of some articles. The cheaper the conveyance, the more commodities will be conveyed; and the profits of the canals may be thus augmented instead of being diminished by low duties. It is indeed supposed that the tolls on some commodities may be reduced or approximated to the constitutional minimum without any loss of revenue;[d] and it is a subject worthy of your serious consideration, whether the power of imposing transit duties or taxes, being a legislative power, ought to be delegated or transferred, unless under extraordinary circumstances.[10]

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[d] Const. 1821, art. 7, § 10.

[10] Chapter 219, passed April 12, continued the policy under which canal tolls were regulated by the canal board. The rates of toll were to be contained in a list filed with the comptroller.

The construction of a great road from the Hudson River to Lake Erie through the southwestern counties, has been for a considerable time under public consideration, and for two consecutive sessions under legislative discussion. Its claims to public favor are generally well understood, and I believe duly appreciated. Like all other momentous plans it is not without its opposers, whose motives are undoubtedly pure, although there may be little force in their objections. Some are hostile from views of economy — others from local feelings, and probably a few from not comprehending the whole merits of a project of such diversified bearings, and such colossal dimensions. If a road be advantageous and accommodating for a short distance, its benefits must be felt in the ratio of its extension, and if its passage be through a fertile country of various and inexhaustible powers of production, calculated in some parts for grain, in others for cattle and the dairy, filled with valuable timber and minerals, it must not only open a lucrative market for our great cities, but establish places of sale and purchase for the accommodation of a dense population, which will spring up in the whole range, and spread over the whole area of the interior. We need only cast our eyes on Philadelphia and Pittsburgh, and duly estimate the condition of those prosperous cities, and the intervening regions, in order to realize the soundness of these views, and when our canals and rivers are locked up by ice, we will still be able to find a way to the ocean. You will excuse my repeated mention of this subject, for I assure you that I cherish no other feelings than those which are connected with a deep solicitude for the public welfare, and I think that I may venture to entertain some confidence on this occasion, speaking as I do from personal examination, cautious investigation and mature deliberation. And I am entirely willing to encounter my full share of the responsibility of a measure which will make the wilderness and solitary place glad, and the desert rejoice and blossom as the rose.

In the satisfaction which we experience from the view of our improvements prospective as well as actual, we cannot but participate in the gratifications which must be derived from the prevalence of a similar spirit in other portions of the union. Ohio is pushing her vast operations with a spirit, energy and success, worthy of all praise, and one of our citizens has, greatly to his honor, loaned her a million of dollars for that purpose. A canal is rapidly constructing around the falls of Ohio. A navigable communication between the waters of the Chesapeake and Delaware, is in successful progress. And besides the meritorious canals in Pennsylvania, which have been made and are making, by associated enterprise, that great state has established a board for public improvements with a view to more extended operations. A communication is also contemplated between the waters of the Potomac and the Ohio; and it is ardently hoped that this stupendous project will be as successful in its execution, as it is magnificent in its design, and that its interests will be promoted by the most liberal contributions of public munificence.

The late alarming commercial convulsions ought to inculcate the necessity of avoiding a recurrence of those calamities, by avoiding the causes which produced them. Heretofore the calamitous derangements in Great Britain have been ascribed to a variety of causes — but principally to a transition state from war to peace and to excess of production, but I believe that the better opinion now is that they are chiefly imputable to excessive emissions of paper money in the shape of bank notes; and as similar distresses were experienced almost contemporaneously in this country, we may trace them to similar causes. The profits of our city banks, besides interest on actual capital, are derived from discounts on deposits and issues of paper money. And those of the country banks, principally from the last source. A bank, generally speaking, may issue notes to three times the amount of the capital

paid in. This, although intended for a wholesome restriction, is in reality a most pernicious authorization, and can never be justified by any state of things. The authority to create money, will almost always be abused, and the expedients to produce a forced and artificial circulation of bank paper; and to redeem it on every alarm and convulsion must inevitably scatter distrust and confusion in the money-eyed market, engender a system of deleterious speculation, derange the natural course of trade, and produce those alternation of prices which are injurious to all descriptions of people. In these struggles of cupidity, a few great fortunes may be made; but fraud, peculation, and bankruptcy, will follow in their train. The regular current of business will be checked, credit will be banished, and capital will either seek security in abstraction from business, or tempted by high profits, will give the reins to an adventuring spirit, and participate in the general wreck and ruin. It is to be ardently hoped that the legislature will exercise more than ordinary circumspection in future. A few solitary cases may present when chartered grants may be auspicious to particular places, and the surrounding country; but the power of making money, is a dangerous faculty, and its liability to perversion, is in proportion to its extension. Banking privileges deposited in unskillful hands, may be abused without design, and from ignorance; but when granted to fraudulent men who prefer wealth to character, and the gratifications of avarice to the honors of virtue, there will scarcely be bounds to the evils that will ensue; and experience has evinced, that applications of this kind are made almost always for personal benefit, not for public accommodation. Hence general regulations are indispensably necessary, for restricting the issues of bank paper, for preventing the possession of a certain quantity of metallic money and adequate security for the redemption of bank notes and the payment of debts, for compelling the attendance and in-

creasing the responsibility of directors, for detecting any errors or misstatements in the periodical renditions of the state of banking institutions, and for prohibiting the circulation of bank notes below a certain sum; and it is believed by many respectable and well informed citizens, that insurance might be obtained at a cheaper rate, and from sources equally safe with the present, if the act to prevent foreigners from becoming insurers in certain cases in this state were repealed.

The revision of our statutes will necessarily bring before you the merits of our criminal code. There is one capital defect which pervades the whole system, and that is the extensive latitude which is given to judicial discretion in the dispensation of punishments. We have sixty-three criminal courts, besides tribunals of summary jurisdiction for the trial of petty offences. There is of course great disparities in punishments; again the specific statutory punishments are sometimes so unequal in their application to crimes, that injustice bordering on cruelty, may result. All kinds of burglary, whether merely technical or highly aggravated, are punished with imprisonment for life in the state prison. Hence, offences of a trivial nature, not exceeding sometimes petty larceny in depravity or danger, may receive that tremendous infliction. Manslaughter sometimes borders on excusable homicide, and at other times assimilates to murder. In England it is punishable with fine or transportation—here the punishment must not be less than three, nor more than fourteen years in the state prison. For a second conviction for petty larceny, the convict must go to the state prison for three years, and the first conviction may be a summary one without the intervention of a jury. I have recently pardoned a convict of this description after an imprisonment of more than a year, and well recommended in other respects, whose first offence consisted in stealing a whip lash, and the second a shilling. The counterfeiting or fraudulently uttering gold or silver coin, is

punishable with imprisonment for life. The same offence in relation to paper money may be visited with the same imprisonment, or for a period not less than seven years. The possession of metallic money with intent to pass it, may be punished for not more than seven years, and the possession of paper money with the like intent, must be punished for not less than seven years. It will at once be perceived that among the many evils which proceed from these disparities and incongruities, not the least are the continual applications for pardons, and sometimes the absolute necessity of the interference of the executive, who must either remain inexorable to the united voice of justice and mercy and the recommendations of courts and juries, or countenance to a certain extent, a departure from a strict system of penal inflictions.

Crimes are generally gradual in their progress and most frequently commence in misdemeanors of no great aggravation. Hence the necessity of arresting their progress in the first stages of depravity. To houses devoted to gambling, intemperance and licentiousness, we may trace the degradation of our youth and the sources of parental affliction. It is alleged that there are defects in our laws for the prevention of immorality, which require your correcting interposition, and the importance of this suggestion, is certainly deserving of your early notice.[11]

During the recess, suits have been brought by claimants deriving title under the children of Roger Morris and Mary his wife, against grantees under the state; and in pursuance of the act more effectually to provide for defending the titles of certain persons in the counties of Putnam and Dutchess, derived from the people of this state, against any claims set up by or under the children of Roger Morris and Mary his wife, deceased, I have employed able counsel to

[11] Part 4 of the Revised Statutes, passed December 10, 1828, included provisions relative to crimes, punishment, proceedings in criminal cases, and prison discipline.

assist the Attorney General in defending such suits. At the close of the last session, a committee was appointed by the senate, to confer with the claimants. I am not advised of the results of this arrangement, but I understand that a disposition still exists, on their part, for an amicable and accommodating negotiation.[12]

It sometimes happens from the lapse of years, that the titles of land are in some instances endangered by the want of authority to put the deeds on record. According to the present law, a deed cannot be recorded unless its execution be proved by one of the subscribing witnesses, or be acknowledged by the grantor. There are deeds however, to which the witnesses and grantors are all dead or resident without the state. In these cases, their execution cannot be proved or acknowledged so as to be recorded, and consequently the owners of the land can only use the deeds as evidence by proving in trials, in open court, first, that the subscribing witnesses, reside out of the state, or are dead, and secondly, the handwriting of the subscribing witnesses. But witnesses to prove the death or non-residence and the handwriting of subscribing witnesses, are fast lessening in number as their ages advance. In this way the owners of land may fail in their attempts to establish their titles, for although ancient deeds are sometimes given in evidence, without proof of their execution, where possession of the lands has corresponded with them, yet the term of time necessary to bring a deed under this denomination, does not seem to be definitely settled. To obviate in some degree, these evils, it might be advisable to provide for proving deeds where the subscribing witnesses and grantors all reside out of the state or are dead in like manner, as the same deeds under the same circumstances would be proved in trials in open court, and also for allowing the deeds so

[12] See 1826, note 10. Chapter 302, passed April 16, 1827, provided for extinguishing the claims of John Jacob Astor and others, and for quieting the possession of certain lands in the counties of Putnam and Dutchess.

proved to be put on record. As this proof would be rather special, it might be expedient to require it to be taken before one of the judges of our supreme or circuit courts or before a judge of a similar grade in a different state.[13]

In cases of vacancies in the offices of clerks and sheriffs of counties, the executive is directed to order new elections within a prescribed period. As the strict execution of this act is sometimes attended with unnecessary inconvenience to the people, it is submitted to you whether it would not be expedient to convert this mandatory into a discretionary provision.[14]

The frequent applications for field ordnance for the requisite supply of the artillery is not a little perplexing to the Commissary General and as he is not furnished with the means of compliance, that useful corps is greatly discouraged in its meritorious exertions.

Our code in relation to pauperism is nearly a transcript of the English system, and a worse model could not be found. Experience has shown that pauperism has increased in the ratio of its supplies and accommodations. The establishment of county almshouses with appendant farms for labor, has had a most mitigating effect, wherever the experiment has been fairly tried: besides the diminution of expense, as well as of the number of the poor, their comfort will be much increased. And it is said if the avails of the excise were transferred as they ought to be from the towns, to the support of the county poor

[13] The Revised Statutes, Part 2, chapter 3, passed December 4, 1827, contained provisions relative to the acknowledgment, proof and recording of conveyances. Section 30 was apparently intended to answer Governor Clinton's suggestion as to the proof of deeds in certain cases.

[14] The procedure relative to filling vacancies in the office of sheriff and county clerk was provided for by the Revised Statutes, part one, chapter 5, passed December 3, 1827. The Governor was authorized to appoint to fill vacancies, except where the vacancy was occasioned by the death of the incumbent. These statutes also provided that the under sheriff and deputy county clerk should perform the duties of sheriff and clerk respectively in case of a vacancy until it should be filled by appointment or election.

houses, that any other taxation for pauperism will be rendered unnecessary.[15]

The extraordinary migrations to this state from foreign countries during the last season have been attended with privations, afflictions, and calamities, that strongly appeal to our humanity. Whatever discordant opinions may be entertained as to this policy, there can be none as to the benevolence of relief. Some of our cities and towns are already unduly burdened with persons of this description and the distressing condition of so many human beings, certainly presents a strong case for the charity of the state.

As the demands of this state against the United States for advances during the late war, were not finally adjusted, I requested the comptroller to repair to the seat of the national government, and attend in person to this concern. This he has done as far as in his power, promptly and satisfactorily. At a time of great pressure and public danger, when the national government was crippled in its means, and paralyzed in its operations, this state stepped forward and contributed all in its power to defend the soil and sustain the honor of our country. The governor of the state, for a portion of the war, had a command as Major General under the United States, and in military movements, as well as in the operations of the commissariat and the payment of the troops, there was a mixture of state and national authorities. And this too occurred at a period peculiarly perplexing, when the turmoils and agitations of the times interfered with a close and accurate attention to the ordinary routine of business—hence arose confusion in the accounts, imperfections in the vouchers, and great embarrassments in all the arrangements. It was therefore

[15] Chapter 99, passed March 23, authorized temporary outside relief to poor persons. Chapter 245, passed April 14, imposed a penalty for bringing a poor person into a city or town to which he was not chargeable and leaving him therein. The revised statutes (Part one, chapter 20, passed December 3, 1827,) provided fully for the care and maintenance of the poor, including officers, almhouses and other matters relating to administration.

to be expected that the settlement of our demands would not be fettered by a fastidious application of technical formalities, but that the public spirit of the state would be met by a correspondent liberality. This anticipation not having been realized, and there being still equitably due 186,000 dollars on account of principal and interest, it will remain with you to determine on the expediency of an application to the national legislature, where alone justice can be obtained.

The other object contemplated in the act for the settlement of our concerns with the United States has been seduously attended to, but without success, I mean the sale of our lands, buildings, fortifications, and heavy ordnance on Staten Island. I have understood that the very able board of engineers has considered those possessions as an important branch of a system of general defence, but hitherto no authority has been given to complete the purchase. In the meantime, an application has been made by the treasury department for three or four acres off the southern extremity of the land for the site of a light house. It ought to be well understood before this disposition is made, whether it may not interfere with defensive erections, or impair the general value of the property.[16]

Few events in our times have created a stronger and more general sensation than the coincident deaths on the fiftieth anniversary of our national existence, of two of the immortal band of patriots and statesmen that composed the American Congress of 1776 — the one the eloquent writer and both the able advocates and intrepid signers of the Declaration of Independence.*

In cherishing those sentiments of respect and veneration which are due to distinguished and departed merit,

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[16] Chapter 324, passed April 17, ceded to the United States about eight and three-fourths acres for a light house at Prince's Bay in Richmond County, Staten Island.

* John Adams and Thomas Jefferson died July 4, 1826.

let us not be unmindful of the immense debt of gratitude which we owe to the surviving worthies of the revolution. Their number is constantly diminishing by the encroachments of advanced age, and the decay of constitutions impaired by the hardships of a military life. The claims of those excellent men for unrequited services and unsurpassed sufferings, are now before the councils of the nation. Let gratitude and justice unite in dispensing the full measure of just retribution, in imparting comfort to their declining years, and letting their end be peace.

It is suitable to this occasion to solicit your attention to the following resolve of congress, passed on the 4th of October, 1777:

"*Resolved.* That the Governor and Council of New York be desired to erect a monument, at continental expense, of the value of five hundred dollars, to the memory of the late Brigadier Herkimer, who commanded the militia of Tryon county, in the state of New York, and was killed fighting gallantly in defence of the liberty of these states."

At the most critical period of the revolutionary war when this state was nearly surrounded with hostile forces, and when destroying armies were penetrating it in various directions, the gallant Herkimer fell on the field of battle at the head of his patriotic neighbors. This exhibition of heroic virtue attracted the distinguished notice of Congress, but the situation of the times presented obstacles to an immediate compliance with their resolve. As there can be no reason for further delay, I hope that this subject will occupy your early attention.[17]

The expressions of confidence which I have uniformly experienced from the people of this state, and their renewed approbation on a recent occasion, have impressed

[17] Chapter 618, passed May 11, 1895, appropriated $3000 for the purpose of "enlarging and enclosing in a suitable manner the family burial lot upon which are interred the remains of General Nicholas Herkimer, and also to erect thereon a monument to his memory." See 1828, note 12.

me with sentiments of gratitude, which no time nor vicissitude can extinguish. But preferring the testimony of conduct to the language of profession, I shall cheerfully submit to the decision of time, my profound sense of the distinguished honors conferred on me for my humble exertions in favor of the prosperity of our country.

DE WITT CLINTON.

Albany 2d January, 1827.

SPECIAL MESSAGES.

January 3. To the Senate: Transmitting papers relative to the New Jersey boundary dispute. [See note 2.]

January 3. To the Assembly:

"GENTLEMEN.—I herewith transmit to you an application from the treasury department, for the purchase of lands for the site of a lighthouse at the Narrows on Staten Island; and also a report of the Comptroller of this state; both of which are alluded to in my annual message. [See note 16.]

DE WITT CLINTON."

Albany, January 3rd, 1827.

January 5. To the Senate:

"GENTLEMEN.—I transmit a petition directed to me, and which ought to have been addressed to the legislature, as I have no authority to act on it. As the signers are respectable, and the object important, I conceive it proper to submit it to your serious consideration.

DE WITT CLINTON."

Albany, January 5, 1827.

The petition was from a company of cavalry in the town of Hopkinton, and its vicinity, requesting to be supplied with swords and pistols from the public arsenal.[18]

[18] A senate committee reported that it would be inexpedient to grant this petition from the Hopkinton cavalry company.

January 5. To the Assembly: Transmitting a resolution adopted by the Legislature of Vermont disapproving the Tennessee proposition to elect the president and vice-president by direct vote, and making members of Congress ineligible to civil appointments from the president.

January 15. To the Assembly: Transmitting the following letter from the Navy Department:

Navy Department, 6*th January*, 1827.

Sir.— The Commissioners of Navy Hospitals, designated by act of congress, passed Feb. 26th, 1811, have, for the purpose of erecting a naval hospital thereon purchased of the legal representatives of the late Martin Schenck, Esq. a tract of land, situated near the Navy Yard, at Brooklyn, N. Y.; a more particular description of which will be found in the accompanying extract from the title deed; and they desire that the jurisdiction over the premises may be ceded to the United States, that they may be the better enabled to accomplish the object of their appointment.

Should you consider this cession consistent with the interests of the state of New York, I have the honor to request, in behalf of the commissioners, that you will be pleased to submit the subject to the consideration of the legislature, with such recommendation as shall in your judgment appear to be proper.

I have the honor to be,
Very respectfully, Sir,
Your ob' serv't.
SAM. L. SOUTHARD.

His Excellency De Witt Clinton,
Governor of New York.

January 15. To the Assembly:

"Gentlemen.— By the fifth section of the act directing the mode of appointing certain officers whose appointment is not otherwise provided for by the constitution, it is made

the duty of the several inspectors of produce, goods, wares or merchandize, to report annually to the legislature the quantity, and as nearly as may be, the value of the produce, goods, wares or merchandize by them severally inspected, together with the fees or emoluments derived from the said offices, and such other intelligence as shall be calculated to lead to the improvement of the quality, or enlargement of the quantity of the several articles inspected.

The beneficial objects of this provision are frustrated by the general neglect of the inspectors to make returns.

I send a few which have been transmitted to me, and I would suggest whether the enactment of a law would not be expedient, imposing penalties for a violation of this statute, and directing that the returns should be made on or before a prescribed time, and under oath.[19]

DE WITT CLINTON."

Albany, January 15, 1827.

January 17. To the Senate: Transmitting a resolution adopted by the Legislature of Georgia proposing an amendment to the federal constitution depriving the House of Representatives of any power to determine an election of president.

January 23. To the Senate: Transmitting a memorial from the Seneca Indians presenting a claim against the State for damages caused by a diversion of the waters of the Tonawanda Creek into the feeder of the Erie Canal.[20]

January 23. To the Assembly: Transmitting the annual report of the superintendents of the Brothertown and Stockbridge Indians; also a representation from the Chiefs

[19] Chapter 37, passed February 2, 1827, required inspectors to report annually on or before the 1st of February, for the preceding calendar year, and imposed a penalty of $200 for a default.

[20] By chapter 160, passed April 4, the canal appraisers were directed to appraise the damages caused by the diversion of water from the Tonawanda creek as stated in the memorial, and make an award therefor.

and head men of the Stockbridge Indians residing at Green Bay; also a further communication from the Superintendents relative to the annuities payable to the Stockbridge Indians in view of their removal to Green Bay, and a statement of the difficulties attending prosecutions for trespasses on lands owned by the Brothertown Indians.

January 26. To the Senate:

"Gentlemen.— With this message, you will receive the annual report of the inspector general of staves and heading in the city of New York. You will perceive the importance of this concern to our trade, and the expediency of giving it due encouragement. It is supposed that a reduction of the tolls on staves and heading would bring more to market, without a diminution of revenue; and the inspector-general is of opinion that it will be advisable, during a great press of business which sometimes occurs, to authorize him to employ a suitable number of persons to officiate as cullers, as the present number cannot exceed ten, which is sufficient for all ordinary purposes.[21]

De WITT CLINTON."

Albany, January 25, 1827.

January 26. To the Assembly: Transmitting the annual report of the Commissary General.

January 27. To the Senate: Transmitting papers received from the Governor of Georgia relative to treaties made with the Creek Indians.

January 31. To the Assembly: Transmitting the annual report of the state of the militia.

February 8. To the Senate: Transmitting a resolution adopted by the Legislature of Alabama, disapproving the Ohio proposition relative to the abolition of slavery and

[21] Chapter 235, passed April 13, and chapter 310, passed April 16, provided for the inspection of staves and heading in Albany.

the New Jersey proposition relative to the colonization of colored persons.

February 14. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

February 26. To the Senate: Transmitting a resolution adopted by the Legislature of Ohio recommending that the Federal constitution be amended so as to authorize "all free white male citizens of the United States of the age of twenty-one years, to vote directly for a president of the United States, and at the same time to vote for as many electors as the state may be entitled to have senators and representatives in congress; which electors shall, in case no candidate shall have a majority of all the votes given by the free white male citizens of the United States of the age of twenty-one years, proceed forthwith to elect a president from the two persons having the highest number of votes."

March 17. To the Assembly:

"GENTLEMEN.— The abduction of William Morgan, being an act of unprecedented violence, has justly excited unequivocal reprobation, and the apprehensions which are entertained of his fate, have produced general alarm and anxiety. Understanding that this subject is under the consideration of your honorable body, I have thought proper to communicate to you all the information in my power respecting it; and this I should have done before; had I not been apprehensive that a premature disclosure might have interfered with pending investigations. If any future intelligence of importance shall be received, I shall not fail to communicate it.[22]

DE WITT CLINTON."

March 17, 1827.

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22 In the Assembly, the Morgan papers were referred to a select committee, which on the 4th of April presented a report, reciting the substance of the facts then ascertained relative to the abduction. According to the report

The information communicated by the Governor does not appear in the journal, but the assembly records in the Manuscript Room in the State Library include a large number of petitions, affidavits and other papers relating to this matter.

"these petitions set forth, that on the 11th day of September last, the said William Morgan was, by color of criminal process, taken from the village of Batavia, in the county of Genesee to Canandaigua, in the county of Ontario; that upon an examination before a magistrate, said Morgan was discharged; that he was subsequently, and upon the same day, arrested upon a demand on which judgment was obtained, and he was confined within the jail of the county of Ontario; that on the evening of the 12th of September, certain persons, who had been previously engaged in procuring the seizure of Morgan at Batavia, and in his subsequent removal to and confinement at Canandaigua, discharged the debt for which he had been committed, and cause him to be liberated from prison; that on leaving the prison, said Morgan was violently seized, and, against his consent, forced into a carriage, which was rapidly driven from said village of Canandaigua; since which time, no certain information has been obtained concerning him; and that with this deprivation of liberty, are connected many circumstances which create a belief that he has been deprived of life. The foregoing statements are embraced in all the petitions before the committee.

A portion of the petitioners further represent, that said Morgan was conveyed to the Niagara frontier, where, they allege, that he was murdered on the night of the 14th of September last, and they all join in the belief that the conspiracy against this citizen was extended through several of the western counties, and was the result of a previously concerted plan."

The committee said that while several affidavits had been produced, the testimony failed to reach the most serious charges in the petitions, but that "from the testimony adduced no doubt remains in relation to the unlawful seizure and removal of Morgan; for which offence, several persons were arrested, and having pleaded guilty to the indictments found against them, are now suffering the penalties of the law, in the jail in the county of Ontario."

After discussing the insufficiency, and also the indefiniteness of the affidavits presented, the committee said it was difficult to create any tribunal to make the needed investigation covering several counties, which could be clothed with powers not already possessed by the courts, and concluded by recommending the adoption of a concurrent resolution authorizing the Governor to offer a reward of $5000 for the discovery of Morgan if alive, or if dead for the conviction of his murderers; and also a resolution providing for the appointment of a committee of five, three from the Assembly and two from the Senate to investigate the whole matter and report the result to the next legislature. The Assembly did not adopt these resolutions.

See 1828, note 17.

March 26. To the Assembly: Transmitting the annual report of the inspector of flour and meal in the city of New York and Kings County.

April 4. To the Senate: Transmitting a resolution adopted by the Legislature of Maine, recommending that "if it shall be the determination of the government of the United States to appropriate a part of its revenue to the purposes of internal improvement, in the construction of roads and canals and improving the navigation of rivers, and in promoting education, it is the opinion of this legislature that the funds designed for these objects ought to be distributed among the several states in proportion to their population, to be expended under the authority of their respective legislatures."

The committee which reported the resolution estimated the annual surplus revenue of the federal government at $10,000,000. (See note 1.)

April 6. To the Senate:

Veto of a bill entitled "An act to regulate the sale of lottery tickets." [23]

"In returning the bill entitled 'an act to regulate the sale of lottery tickets,' with objections to its becoming a law in its present shape, I cannot sufficiently express my regret that a due regard for public faith, and an anxious desire to shorten the duration of the authorized lotteries, compel me to resort to this step, especially as the general provisions of the bill are salutary, and well calculated to arrest the progress of existing evils.

The establishment of lotteries, although dubious in the eye of morality, and certain in the most pernicious results, has been practised by the state for a long period of time.

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[23] This bill was not passed over the veto, but a bill "to prevent the sale of tickets in unauthorized lotteries, and to prevent the forgery of lottery tickets," was passed and became a law, chapter 300 on the 16th of April.

In 1814, a statute was passed for raising in this way about 300,000 dollars for the benefit of some of our colleges and literary and scientific institutions. Great delays occurred in the execution of these and previous grants; great losses had been sustained by the defaults of managers and contractors; the state was constantly exposed to heavy responsibilities, and the spirit of gambling and adventure, produced by the insurance of tickets during the long drawings, was attended with widespread ruin in the community. To put down, as far as practicable, these increasing evils, and to protect the state from further losses and responsibilities, an act was passed in 1822, entitled 'an act to limit the continuance of lotteries,' which proposed to the several institutions interested in the grants of 1814, to assume conjointly, or to appoint one of their number to assume the supervision and direction of the said lottery, and to receive its avails in lieu of, and as an equivalent for the several specific grants, and that when the said institutions should consent, in writing, to this provision, it should be lawful for them to assume the management of the lotteries, and that the state should be absolved from all further payments and responsibilities. This proposal was agreed to by the institutions, and managers and agents were appointed, who have introduced a new mode of conducting lotteries, that has abolished the mischiefs arising from the insurance of tickets, the most prominent evil of the former system. It does not appear that the institutions, or their agents, have violated their engagements to the state in any respect, and it is believed that the evils complained of originate principally from the sale of tickets in illegal lotteries.

In arriving at a just conclusion with respect to the merits of this bill, it is proper to consider, 1st. whether the statute of 1822 is a contract; and 2d, whether, if a contract, it is violated by the bill now under consideration.

As to the first point, there can be no reasonable doubt. The act of 1822 is a provisional grant, to take effect on the

occurrence of a certain event; and on the acceptance of the institutions, it became absolute and executed, and it necessarily implies a stipulation not to reassume or lessen the value of the thing granted. The state, in fact, proposed a certain arrangement, to be binding on its being assented to in a prescribed way by certain corporations. The signification of this assent was a consummation of the contract. But the statute expressly recognizes the arrangement as a contract, and thereby removes all doubts on the subject.

By this contract, the institutions, or their agents and managers, were invested with all the beneficial interests springing from the lotteries authorized by the act of 1814, and with the absolute power of managing those lotteries and selling tickets, and the sum of 40,000 dollars has been paid into the treasury, in consequence of a subsequent grant.

As to the second point, it appears equally clear to me that the bill is a violation of the contract, under the act of 1822.[e] It converts an absolute right to vend tickets, into a qualified permission, and exacts as indispensable requisites 1st. The obtainment of a license which may be granted or refused; 2d. The payment of 500 dollars for such license in the city of New York, and 3d. A bond with two approved sureties in the sum of 5,000 dollars for the performance of certain conditions.

Waiving the question of the right to prohibit sales of shares of tickets, it is probable that evasive expedients may be adopted if this bill is carried into effect, and thereby the evils of lotteries may be visited upon us for a longer period than would occur, if such provision were not made. This prohibition will probably produce cheap tickets; the sums raised will be correspondently reduced, and the duration of the system consequently extended. Again, the provision complained of, would impair the credit of the lotteries and

[e] U. S. Const. art. 1, § 10, clause 1.

embarrass the operations of the managers, and would probably terminate in litigation in the highest tribunals of the country, that would last for many years, and in the mean time the lotteries failing of the stipulated protection, might either be thrown back on the institutions or rendered to a great degree unproductive in the hands of the managers, and thus not only would the plighted faith of the state be impeached, and its high character for integrity sullied, but the interests of some of our most important literary establishments seriously affected, and the evils now so justly complained of would be greatly aggravated and most injudiciously prolonged."

April 12. To the Assembly: Transmitting and recommending favorable consideration of a communication from the Secretary of State and the Adjutant General, representing the inconveniences connected with the existing mode of issuing militia commissions, a part of which duty devolved upon the Adjutant General, and a part on the Secretary of State. It was said that between 6000 and 7000 commissions had been issued during the previous year, and it was suggested that a clerk be provided in the office of the Adjutant General charged with the particular duty of attending to the preparation and issuance of commissions.[24]

April 13. To the Senate:

"Gentlemen.—I have the honor to transmit a claim from Horatio Jones against the state, for services rendered as interpreter on certain occasions for the Indians. The sum applicable to contingent charges relative to Indian concerns, is but five hundred dollars; which is too small in amount to extend to this charge, being almost always ex-

[24] By chapter 323, passed April 16, the duty of making and issuing military commissions was transferred from the Secretary of State to the Adjutant General, and an appropriation was made to the latter officer for clerk hire and other expenses connected with this added duty.

hausted in the ordinary objects connected with Indian negotiations and the payment of annuities. I believe Mr. Jones' claim to be correct.[25]

DE WITT CLINTON."

April 16. To the Assembly:

Veto of a bill entitled "An act to authorize the erection of a new court house and jail in the county of Onondaga."

"My attention having been earnestly requested by several of our fellow citizens of Onondaga county, to the bill, entitled 'an act to authorize the erection of a new court-house and jail in the county of Onondaga,' which they have represented as hostile to the public interests, I have considered it my duty to examine the papers on this subject connected with the bill. In consideration of their voluminous nature, and the pressure of other duties, I have not been able, until recently, to arrive at a definitive decision on the merits of the bill, and to prepare the objections which I now send against its becoming a law.

The questions involved in the consideration of this subject are, 1st, whether the measure is expedient at the present juncture, and 2d, if so, whether the proper means are prescribed for its accomplishment.

It appears that on the first day of December last, the supervisors of Onondaga county agreed upon an application to the legislature for the erection of a new court house and jail on the present site. This precipitate measure was adopted without previous announcement to the people; without due advisement with constituents, and against the subsequently ascertained sense of the county. With all the advantages of preconcert and preparation, it was only carried by seven out of the thirteen supervisors that compose that respectable board; and the testimony before me

[25] The appropriation act, chapter 335, made provision for the compensation of Horatio Jones as an Indian interpreter.

renders it clear, that it could not again receive the same sanction, and it is highly probable that the towns are as ten to three against it.

It also appears that a considerable burden is already imposed on the county for the erection of a pauper establishment, and the purchase of appropriate lands; and that the people feel no disposition to increase, without urgent necessity, the weight of taxation.

It does not appear that the public edifices are in such a ruinous and dilapidated state as to require the immediate substitution of new ones. The present have not existed a quarter of a century, and have been frequently repaired; and it is probable that they may be made to answer all the essential purposes of public accommodation for a number of years.

In old counties, where population has nearly attained its maximum, where business has settled down into fixed channels, and in ascertained positions, and where no mutations can render it necessary to make any alterations in their limits, a site for the public buildings may be calculated on as fixed and definitive; but in new counties such a lasting arrangement ought never to be contemplated. The public accommodation is the important object to be attained in the location of the county edifices, and in no case of local concern do the people manifest a greater anxiety, or feel a deeper interest. The influx and increase of population, the augmentation of internal trade, the establishment of new facilities of communication, and changes in the boundaries and dimensions of counties, may render a location that is proper and accommodating at the present time, entirely otherwise in a few years. Business may have sought new positions, and the people will necessarily resort to them.

It also appears, as this measure has been adopted without a becoming respect for public opinion, and urged on the legislature with imprudent zeal, that the county is now in a state of great excitement; and if carried into execution,

that the irritation will increase, and that a majority of the people will consider that they have been unjustly treated through all the stages of this transaction. For these reasons, and without expressing any opinion as to the proper place for a final location, I humbly conceive that prudence and public tranquillity require from us to suspend further proceedings, and to wait until the subject has undergone a more ample investigation, and until it can receive a more satisfactory decision. What has been commenced with precipitation, ought not to be pursued in the same spirit, nor consummated with similar improvidence. The harmony of a respectable population, and the prosperity of an important county ought not to be disturbed or jeopardized for light and transient considerations.

Viewing, however, this subject in another attitude, and admitting for the sake of meeting the case in the strongest point, that it is expedient to authorize the construction of new county buildings, a question of great moment still remains for decision, whether the provisions of the bill are justified by propriety and expediency.

It has been the wise policy of our free government to entrust to subordinate civil communities, the management of their distinctive and exclusive concerns; and with a minute and comprehensive knowledge of them, and under the vigilant guardianship of interest, few complaints have been made, few errors have been committed, and the aggregate prosperity has been generally consulted. With this view, the people of the several towns exercise personal legislation in their local affairs, as was done on a more extended scale in the ancient democracies; but as the people of a whole county cannot assemble in person to regulate the county concerns, supervisors are elected annually in the several towns to compose a county legislature. Fiscal concerns have been specially consigned to their care, and other important interests are entrusted to their superintendence. The office of supervisor has existed from the

earliest periods of our civil institutions; and the proceedings of the boards of supervisors emanating as they do from the most respected inhabitants, and the representatives of the several towns, are generally deserving of great respect, and any tendencies to diminish the just weight of this important branch of our civil institutions, ought to be effectually resisted.

I am clearly of opinion, that although non-residents may have a transient and occasional interest in the erection of accommodating court houses, yet that the people of each county may fairly be considered as having an exclusive interest in them, and as such, I believe that this concern ought to be committed to the county legislators, as the immediate representatives of the people, for the regulation of local interests, and not intrusted to the management of strangers who may have no suitable feelings or sensibilities, and little knowledge on the subject. Would it not be considered a strange arrangement to call in commissioners from another town to designate a house for town meetings, or for the legislature of the state to submit the location of the permanent seat of government to a board of commissioners selected from another state? The impropriety of such proceedings would be so obviously glaring, that they would not even be taken into consideration; and what is the difference in principle between these cases and the measure authorized by the present bill, in committing the location of the court houses to strangers appointed for that purpose? If a bare majority of the supervisors is not considered a proper quorum of decision, on account of their representing unequal masses of population, the objection may be overruled by requiring two-thirds of the board; and in case that result could not be obtained, then by committing the whole question to the award of a majority of the people.

I am well aware that precedents exist, which may be plead in favor of the course prescribed in the bill; but the

sooner vicious precedents are abandoned, the better for the public interests; and however they may be considered obligatory in judicial proceedings, in legislative ones they have no binding force, and are entitled to imitation and respect to no other and further extent than their accordance with the dictates of justice, the prescriptions of public policy, and the principles of our free governments.

The supposed impartiality of commissioners, is in most cases nominal and gratuitous. They are generally appointed with other views and for the imputed possession of flexible qualities, which may be made to bend to the blandishments of intrigue, the sensibilities of friendship or those biasses of various descriptions which sometimes insensibly control the conduct of the wisest and most upright men. Hence we perceive that their decisions are seldom satisfactory, and counties can be designated which are still in an agitated state, after the lapse of years. If the decision had been committed at once to the people, or the boards of supervisors, an immediate acquiescence would have resulted.

The bill, then, on taking the decision of this question from the authorities of the county, and committing it to a board of strangers constituted for the occasion, has taken the ground of unreasonable distrust of the former, and also of unequivocal slight. But, as if this were not sufficient humiliation, a board for superintending the building is also appointed in the bill. For this, precedent may also be plead; but there is no precedent, that I can learn, on record, which deprives the supervisors of the power of borrowing money for the erection of the buildings, until the taxes become productive; and I regret to say that this provision is found in the present bill, the superintending commissioners being invested with that authority, to the exclusion and disparagement of the people's representatives. If the supervisors conduct improperly, they are responsible to the

people; but the designating commissioners are beyond their control, and feel no immediate interest in a proper decision. They are liable to be approached months before, and may be subjected to the influence of sympathies that ought not to be consulted. Of all modes that can be devised for this object, this is certainly the most objectionable.

The spirit and character of the bill, however, so obviously indicate the course expected from the locating commissioners, that they can scarcely avoid a compliance. Building commissioners, (a majority of whom reside near the site of the present building,) are appointed with unprecedented powers, and may, if a different site is established, paralyze and prevent the progress of the work; and the officers authorized to judge of the security offered by the said commissioners, are also similarly situated. We may, therefore, under a view of the whole case, and the concomitant circumstances, anticipate with certainty the results of this measure, if finally sanctioned."

The bill was not passed over the veto.

April 17. The Legislature adjourned to meet the second Tuesday of September.

1827. JUNE. SENATE, SPECIAL SESSION.

A special session of the Senate convened on the 27th of June, pursuant to a proclamation issued by Governor Clinton on the 15th of June. The Senate at this session considered only executive business, and adjourned on the 24th of July.

1827. SEPTEMBER. LEGISLATURE, FIFTIETH SESSION.

SECOND MEETING.

The Legislature met on the 11th of September, pursuant to adjournment.

SPECIAL MESSAGES.

October 1. To the Senate:

"GENTLEMEN.—At the request of Mr. Astor, I lay before you a communication relative to his claim for confiscated lands in the counties of Putnam and Dutchess. Impediments it seems have occurred in the adjustment of this controversy, which require your immediate consideration, if it be intended to proceed in the spirit and on the basis of the act of the 16th April last, and which in effect expires by its own limitation in six months, if the present misunderstanding continues.

The peculiar position of this affair, has imposed upon me, the necessity of laying this communication before you, and requesting your prompt attention to it. [See note 12.]

DE WITT CLINTON."

Albany, 29th September, 1827.

The journal does not contain Mr. Astor's communication.

December 4. The Legislature adjourned without day.

De WITT CLINTON, Governor.

FIRST MEETING.

Governor Clinton died on the 11th of February, 1828, and was succeeded by Nathaniel Pitcher, Lieutenant-Governor, who was acting governor during the remainder of the year.

The Legislature met on the 1st of January, and on the same day received from Governor Clinton the following

ANNUAL MESSAGE.

FELLOW CITIZENS OF THE SENATE, AND OF THE ASSEMBLY. — The important and diversified objects of attention combined with the good government of a republic, so extensive in territory, so fertile in resources, and so susceptible of improvement as that in which our lot is cast, must impress you deeply and solemnly, with the magnitude, weight, and extent of the duties assigned to you by the voice of your country, and inculcate the necessity of improving the pre-eminent advantages and of mitigating the evils incident to our situation. The great scourges of mankind have rarely visited us with destroying fury. Peace, plenty and health have presided over our land. War is a stranger, and famine, and the pestilence that walketh in darkness are never experienced. Instead of a scarcity, there is generally a superabundance of subsistence, an excess of production. The cordial anxiety of Henry IV of France, that every peasant in his kingdom might have a fowl in his pot, and the benevolent prayer of a sovereign of Great Britain, that his poorest subject might have education sufficient to read his Bible, were at the times they were uttered considered chimeras of the imagination. In this fortunate land, they

are realized so far as they apply in the fullest latitude, and to the utmost extent.

These distinguished dispensations of Divine Providence, ought indeed to fill our hearts with gratitude, and our lives with devotion to the author of every good and perfect gift — and the prospects of the future, and in the distance, are adapted to inspire the same commendable spirit; and in this view of our situation the simultaneous commencement of the natural year, and your anniversary meeting are calculated to produce emotions of a solemn and impressive character, and well adapted to animate your zeal, and to invigorate your efforts in behalf of the best interests of our country.

But it cannot, nor ought it to be concealed, that our country has been more or less exposed to agitations and commotions, for the last seven years. Party spirit has entered the recesses of retirement, violated the sanctity of female character, invaded the tranquillity of private life, and visited with severe inflictions the peace of families; neither elevation nor humility has been spared; nor the charities of life, nor distinguished public services, nor the fireside, nor the altar, been left free from attack; but a licentious and destroying spirit has gone forth, regardless of everything but the gratification of malignant feelings, and unworthy aspirations. The causes of this alarming and portentous evil, must be found in a great measure in the incompetent and injudicious provisions relative to the office of Chief Magistrate of the Union.

A continuance in office but for one term, would diminish, if not disarm, opposition, and divert the incumbent from the pursuits of personal ambition, to the acquisition of that fame which rests for its support upon the public good. The mode of choice is also highly exceptionable. Instead of a uniform system, there are various rules, some of which are calculated to secure unanimity in the electoral colleges, and others to diminish the legitimate power, if not to an-

nihilate the real force of the states, and there is every facility to bring the final determination into the House of Representatives — an ample field for the operations of management and intrigue, and for the production of suspicions, and imputations, which ought never to stain the character of our country. Nor are the claims of the national government in derogation of the constitutional authorities of the states calculated to quiet the agitations of the times, nor to tranquilize the apprehensions of the community.[1]

Although rash innovation ought ever to be discountenanced, yet salutary improvement ought to be unhesitatingly cultivated. And until some adequate preventives, and efficacious remedies are engrafted into the constitution, we must rarely expect a recurrence of the same tranquillity which formerly shed its benign influence over our country.

Considering the high reputation, and the great revenue, which this state has derived from her internal improvements, it is equally astonishing and mortifying to observe elaborate and systematic attempts to depreciate their utility, and to arrest their progress. It is manifestly an uncandid and superficial view of the subject, to confine an estimate of its benefits to an excess of income, above the interest of expenditure; and yet this standard of appreciation has been adopted. Artificial navigation was established for public accommodation, for the conveyance of

[1] A Senate committee considered the Governor's suggestions as to the power of the House of Representatives to elect the President and Vice-President, also that the President be ineligible to a second term, and after stating facts relative to the election by the House in 1801 and in 1825, and the failure of the House in the latter instance to elect a candidate who was said to have been manifestly the choice of the people — John Quincy Adams having been chosen in preference to Andrew Jackson — a majority of the committee proposed a series of resolutions, depriving the House of Representatives of the power to elect the President and Vice-President in case of a failure of the electoral colleges to elect a President and Vice-President, transferring the power to the State Legislature, or to the people, and also making a person who had been chosen to the office of President ineligible to the same station.

articles to and from markets, and revenue is a subordinate object. It was never intended as a primary consideration to fill the coffers of the state, but to augment the general opulence, to animate all the springs of industry and exertion, and to bring home to every man's door an easy and economical means of access to the most advantageous places of sale and purchase; and to narrow down this momentous and comprehensive subject to a mere question of dollars and cents, is to lose sight of the great elements of individual opulence, of public wealth, and national prosperity. It excludes from consideration the one hundred millions of dollars, which have in all probability, been added to the value of real estate — the immense appreciation of all the products of agriculture and fabrics of manufacture which were formerly shut out in a great degree from market — the solid and extensive establishment of inland trade — the vast accession to our marketable productions — the unbounded encouragement of our marine navigation and external commerce — the facility, rapidity and economy of communication — the creation of a dense population, and the erection and increase of villages, towns and cities, and the most efficient encouragement of agriculture and the arts, by a cheap supply of materials for fabrics, and of markets for accommodation; but if we were to overlook these important considerations and confine ourselves to the mere question of revenue, we will see enough to convince the most sceptical that immense pecuniary benefits must flow from new channels of hydraulic communication with the Susquehannah, the Allegany and the St. Lawrence, and their auxiliary and connecting waters, and by a great land avenue or state road from the Hudson to Lake Erie.

The Erie and Champlain canals have cost between 20 and 30,000 dollars a mile, and this enormous expenditure will never occur again. All the mysteries of such operations are developed, and all the difficulties diminished, and it may now be confidently pronounced that the maximum

expense of any given canal will not exceed ten thousand dollars a mile, unless it passes over high mountains by locks, inclined planes, deep cuttings, or under them by extensive tunnels. The opposition to the extension of internal navigation, is based upon an application of the same ratio of expenditure on the constructed to the contemplated canals; but admitting, what is peremptorily denied, that the income from the former does not exceed something more than seven per cent, yet it will even then be evident that the state will gain two and a half per cent by the operation, as loans can be procured on her credit at four and a half per cent.

I cannot, without going too much into detail, refute the other fallacious statements which have mingled with this subject. The reduction of the mill tax to half a mill on the dollar, and its subsequent total discontinuance, (in violation of a fundamental arrangement in that part of our finance connected with internal improvements,) have been carefully concealed, as well as the omission to substitute, as an equivalent, specific productive taxes, and which would, in either case, have satisfied all the exigencies of the treasury, and answered all the requirements for internal improvements, without imposing but light burdens on the community; nor can it be concealed, that the real condition of our finances has been greatly discolored and misunderstood, by inaccurate views and partial examinations.

I therefore do not hesitate to renew, in the most earnest manner, my recommendations in favor of the leading objects of internal improvement, which I have heretofore had the honor to present for your favorable consideration. The means of the state are ample, her resources great—her credit equal to any emergency. Every day adds to her wealth, and every avenue of communication will augment her ability and expand her fame. The constant and progressive increase of the canal revenue, and the correspondent diminution of the debt, will in a few years produce a

total extinguishment; enable, at an early period, the reduction of interest, and finally, enhance to an extent beyond any reasonable demand, the ability of the state to undertake and consummate all needful improvements. And if patriotism still supports its ascendancy — if glory has not lost its incentives — if philanthropy retains its due weight — you have every inducement to act promptly and favorably, fearlessly and efficiently, in the prosecution of these transcendent interests.

While providing for future operations, let us not overlook that vigilant supervision and that rigid economy, which are due to our completed works. It is, to say the least, very questionable whether any reservations of water for hydraulic erections, are not seriously injurious to navigation.

The bars which are formed, and the impediments which are created, are justly and loudly complained of, and the waste and diversion of water frequently interrupt and delay the transit of boats; and it is believed that the public revenue from this source is by no means equal to the loss sustained from the obstructions to navigation.[2]

The premature and unexpected approach of winter, having been unaccompanied with exertions on the part of the public to prevent the closing of the canals by ice, a vast number of vessels were arrested in their progress, containing property worth, it is thought, a million of dollars. As the principal detentions were between Utica and Albany, an additional canal on the north side of the Mohawk, between these places, would greatly facilitate the immense and increasing trade of the interior; and it is certainly expedient, to prevent future embarrassments and perplexities, for the state to declare, that the canals shall be in a navigable state from the first of April to the first of December in every year; and this can be effected without any great inconvenience, and with little expense. I am gratified in stating that the exertions of individuals, and a recur-

[2] Chapter 317, passed April 21, regulated the use of surplus canal waters.

rence of mild weather, have in a great measure obviated the apprehended evils during the present season. If prompt and energetic measures are adopted at the opening of spring, to clear out bars and obstructions of ice, and to let water into the canal, eight months in each year may in ordinary times be appropriated to inland navigation; and in seasons of milder temperature, nine months may be gained.[3] It is also important to remedy the obstructions of the western termination of the Erie canal, and this can only be effectually accomplished by a reinstatement of the original design.

I have formerly and frequently solicited legislative encouragement for the discovery of coal, which, from various geological indications, must exist in vast quantities within our territory; but this subject has been entirely overlooked, and we are now compelled to resort principally to the anthracite beds of Pennsylvania. We may also draw our supplies from the bituminous coal of Tioga, in that state, and on the opening of the Ohio canal, from the vast deposits of the same fossil, which are embosomed in the regions adjoining the Muskingum river and its head waters. The toll on wood amounts to an interdiction of its transportation by the canals beyond a moderate distance, and its rapid consumption by steamboats, by our increasing population, and by the various uses to which it is applied for human accommodation, is so extensive, that its expense has become onerous in our places of concentrated population. That branch of rural economy which embraces the plantation of forests, ought to be fostered, and the reproduction of our woods is an object of primary importance. Peat and turf, which abound in many places, have been found useful to a

[3] A senate committee considered the suggestion relative to keeping open the canals for a definite period each year, and reported that in its opinion a law on the subject would be ineffectual, for the reason that it could not be enforced against weather conditions, which could not be subject to human control, and that it would entail heavy expense to keep the canals open and free from ice for a fixed period each year.

certain extent. It has been estimated, that in the ratio of the consumption of London, this state will require two millions of tons of coal annually, if coal is exclusively used; but as this is not the fact, a great reduction must be allowed. There is however no doubt that the augmentation of all our manufactories, and of all machinery impelled by steam, will increase the demand with the progress of time and population.

We can now, or soon will, procure anthracite coal from Pennsylvania, by the ocean, by the Hudson and Delaware, and by the Morris canal; and other channels may be opened by the Chenango, by the Orange and Sussex, and by the Delaware and Raritan canals. Bituminous, and in some instances, glance coal, may be obtained by the following proposed avenues: by the Chenango, by the Chemung, and by the Ohio canals, by a railroad from Owego to Ithaca, and by the Susquehannah canal, and a railroad from the head of the Otsego lake to the Erie canal. The importance and magnitude of this interest, require that every source of supply should be encouraged, and every means of acquisition attempted. All the great projects of communication I have specified, ought, with this view alone, to receive your favorable notice. Great revenue, as well as great accommodation, invariably results from the conveyance of coal by hydraulic communication. The coal beds at Canal Port or Peter's Camp, in Tioga county, Pennsylvania, have been accurately explored and examined, and competent judges concur in opinion as to excellence of quality, abundance of quantity, facility of approach, and easiness of procurement; besides they are accompanied and environed by sulphuret of iron, bismuth, galena, and almost all the varieties of the best iron ores.

The tendency of the proposed communications to diminish the price and to increase the supply of coal, must be palpable. The Duke of Bridgewater's first canal immediately lowered the price one half; and their auspicious effect

in creating a dense population, which will produce a correspondent consumption, must be evident from our own experience.

In 1750, before the English canals had been formed, the population on the banks of the Thames, was but half of what it is at present.

Coal is essential to the prosperity of our manufactures. The difficulty arising from a change of cargo may be surmounted, as in England, by deposits in spacious boxes, and a rapid transfer by machinery from vessel to vessel; and this will ensure the importation from Ohio, whose canal, I am happy to say, is continued with successful advances, and under the most skillful auspices. All financial impediments have disappeared before the energies of this prosperous state and growing people, and the physical obstacles will be overcome with equal facility, and with the acquisition of immortal glory. Hydraulic communications between the Erie canal and the St. Lawrence river may also have a bearing on this object. The prodigious and astonishing inland trade which will spring up from all these channels of communication, with the avenues which nature has created, will give a new and powerful impetus to all the cardinal interests of society. Whatever difference of opinion may prevail as to the most eligible means of fostering manufactures, there can be none as to the expediency of a judicious encouragement. To work the products of our soil, forests, and mines, into fabrics for our own accommodation, is obviously in accordance with our highest interests, and in unison with the most approved doctrines of political philosophy.[4]

Our staple productions being either not required in Europe, or excluded to a great extent, directly from the West

[4] The subject of the discovery of fossil coal was referred in the Assembly to a select committee. Its report considered at some length the importance of coal as an article of fuel, the desirability of finding it in the state if possible, and submitted a bill providing for the apointment of a suitable person to conduct geological researches. The bill was not passed.

Indies, it behoves us to resort to other expedients to supply our wants at home, or to meet the exigencies of other countries. The culture of hemp and flax, has been strongly recommended for both purposes: the seed of the latter is in great demand in the country where it is principally raised, and that of the former is much wanted with us, where the best land, in the greatest quantities, may be found for both productions. The machines in use for preparing and dressing them, supersede, in a great degree, the burden of previous water, or dew rotting; and their operations in almost all prominent cases, are attended with acknowledged success. It is estimated that four or five acres of hemp land will produce a ton; that a ton of hemp is worth 200 dollars, a bushel of seed 4 dollars, and the product of an acre, without the seed 40, and with it, upwards of 66 dollars. It must therefore be admitted, that this branch of husbandry is lucrative; but agriculturists have not entered into it extensively, from repugnance to innovation, and from the dearness and quantity of seed, which costs eight dollars an acre. It is the opinion of good judges, if this interest is properly fostered, that twelve thousand tons of hemp, worth 2,400,000 dollars, may be annually raised in this state, and that within thirty years, the exportations of hemp, from the United States, will be equivalent in value to those of cotton. An ample encouragement is adjudged to be a bounty of forty dollars on every ton of prime hemp, for a term of years; while some suppose that an additional duty will be beneficial, and is necessary.

There is no doubt that tobacco might be profitably cultivated in the western parts of this state. That variety which is termed golden leaved, or Kites-foot, and which brings the highest prices at home and abroad, has been principally confined to Maryland; within a few years it has been raised in Ohio, in great quantities, and at great profit. The same peculiar adaptations that exist in those states,

apply to our western region, and render this article an object worthy of attention and encouragement.[5]

Howard, the apostle of benevolence, looked forward more with hope than expectation, to the period, when the management of prisons should arrive to such perfection, that their operations should defray their expenditures; I have the satisfaction to announce that this desirable condition is in a state of rapid approximation with us. I have heretofore represented the favorable condition of the penitentiary of the city of New York, in this respect; and it is now fully believed that with the deduction of the expense of conveying convicts to the prison at Auburn, and of assisting them, when discharged, to reach home, and of a small annual fund to keep the building in repair, no future appropriation will be necessary for the support of the male convicts.

The establishment of a special and exclusive penitentiary for female convicts, is deemed an object worthy of your favorable consideration; and it is believed that public opinion duly enlightened, would sustain this measure as coincident with the clearest prescriptions of humanity and policy. In the prison erecting at Mount Pleasant, no provision, I am told, is made for the separate confinement, employment, and government of females — no such arrangements are established at Auburn, nor can they be effected without an expense equal to the erection of a new edifice. In the prison in New York, a large number of female convicts are incarcerated.

In the time intervening between the abandonment of that prison and the transfer of its occupants to the new one at Mount Pleasant, a provision adequate to the exigency ought to be made. Female convicts are rare in the counties, and there are but few at Auburn. After the relin-

[5] Chapter 274, passed April 19, provided for the appointment by the Governor and Senate of an inspector of leaf tobacco in the city of New York and prescribed his duties.

quishment of the state prison in New York, they must be accommodated in the local or county prisons, or confined in the two state penitentiaries with the male convicts, or placed in an asylum provided for the express purpose. The last resort is certainly most worthy of the character of the state, and best adapted to the spirit of the age.[6]

The law authorizing the erection of a State Prison at Mount Pleasant, made no provision for its government and discipline. Three years have been already devoted to its erection, and it will, I understand, soon be in a situation to accommodate four hundred convicts, who will be subject to the will of a single individual, without any law as to discipline or restraint. Although I have no special reference to the present superintendent in the suggestion, yet I think it my duty to recommend your attention to this subject, as one involving considerations which ought never to be overlooked.

A prominent and besetting evil of the times, is the practice of duelling, which frequently shipwrecks the peace of families, and destroys the lives of useful members of society.

In these cases, false notions of honor are arrayed against the dictates of morality, the prescriptions of law, and the injunctions of religion. The extermination of this moral hydra has been found more difficult, than the physical hydra of antiquity. The severity of penal inflictions has been rendered nugatory by the want of certainty, and chivalric folly has prostrated the most sacred considerations.

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[6] By chapter 197, passed April 12, provision was made for the use of the New York prison exclusively for women, and women sentenced in the first or second senate districts were to be committed to that prison. Male convicts were to be sent to the prison at Mount Pleasant. The same act required the commissioners appointed to provide for the erection of a new prison to report an estimate of the probable cost of erecting a prison for women at Mount Pleasant. Chapter 104, passed April 20, 1835, directed the erection of separate buildings for women at each of the state prisons, prescribed the plans of such buildings, and provided for administration by matrons and otherwise.

The failure of past preventives ought not to deter from the application of new expedients. If public opinion is unable to arrest this aggravated evil, the arm of the law ought to be stretched forth, full of terror and replete with punishment. The most effectual prescription heretofore applied was the requirement of an oath from every person entering into office, that he would not be concerned in duelling, but this having been abolished by the new constitution,[a] other measures must be pursued. As most duels take place out of the state, might it not have a preventing effect, to direct all magistrates to make strict inquiry into the charges, and in their discretion to imprison the offenders until notice can be given to the Executive of the state in which the crime was committed, so that he might make the constitutional requisition for their being delivered up for punishment. And if a homicide of this character is perpetrated, may it not be advisable to consider it so in the state where the person dies, as well as in that where the wound was inflicted? Most duels are brought to a fatal termination by the misconduct of seconds, who, in the confidence of self-security, and in the headlong career of demented quixotism, close the door against reconciliation, — and they ought therefore to be visited by exemplary punishment, especially in challenges ending in duels. And where homicides have taken place out of our jurisdiction, what is now adjudged only a misdemeanor or breach of the peace, ought to be deemed a felony, and subjected to punishment in our state prisons. And by such energetic measures, it is earnestly to be hoped that this disgraceful evil and high handed offence may be expelled from our country.[7]

[a] Const. 1821, art. 6; see also 1894, art. 13, § 1.

[7] Chapter 320, passed April 21, 1828, declared that a resident of the State who should fight a duel out of the State should be deemed guilty of murder if his antagonist died in this state within a year and a day, after the infliction of any wound in such duel. Signing or accepting a challenge, or acting as a second or surgeon at a duel was declared to be a felony, and the act contained other provisions intended to suppress duelling.

The enactment of a most important portion of our Revised Code in an interesting shape, and in an able manner, reflects honor upon the industry and talents of the revisors, the attention and intelligence of the legislature, and it is hoped and believed, will contribute essentially to the good government of the state.

The same devotion to this important object, during the present session, will unquestionably present a system of statutory jurisprudence in a laconic and perspicuous style, and lucid, methodical, extensive and comprehensive in its contents and details.[8]

The radical defects of our judiciary system are seated in the constitution, and beyond the cognizance of the legislature, in any other correcting shape, than by the proposal of amendments. The fatal error consisted in separating the judges who try the fact, from the tribunals that pronounce the law; or, in other words, creating circuit courts as distinct and independent forums, and not as emanations from supreme courts.[b] But as the subject now exists, and until constitutional amendments can be adopted, it is your duty to prescribe such emollients as may mitigate, if not extinguish, the evils of the system, by guarding against the delay, which is, to a certain extent, a denial of justice. The municipal authorities of New York have, with a patriotic and enlightened spirit, proposed a remedy in a great degree adequate to the mischief, and referring to our courts of equity as well as of law, which I recommend to your deliberate attention and favorable consideration.[9]

The great inconveniences which frequently arise from the nonresidence of grantors and witnesses, have induced the states of New Jersey and Connecticut to authorize the appointment of commissioners residing in other states to

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[8] Several parts of the Revised Statutes were passed in December, 1827; the remainder was passed in December, 1828.

[b] Const. 1821, art. 5, § 5.

[9] The New York superior court was established by chapter 137, passed March 31.

take the requisite authentications; and as great facilities have been derived from those measures, it may be deemed worthy of inquiry, whether they ought not also to be adopted by this state.[10]

It has been, in a great measure, a matter of course for the legislature to sanction all applications for increasing the powers and enlarging the functions of municipal corporations.

They are considered as measures merely local in operation and exclusive in interest, whereas in truth every portion of our great community is deeply interested in the good government of the parts as well as of the whole. And a good police, wise ordinances and able magistrates, are essential to the comfort and protection of the visitors who resort from all quarters and in great numbers to our principal cities. Our commercial emporium now contains great wealth, abundant resources, a vast population; and all the constituents of opulence, greatness, and augmentation. Its expenditures exceed the disbursements of most of the states, and its means of sustaining its vast burdens unquestionably increase beyond their accumulation.

This local government has generally manifested a spirit of liberality and patriotism in its operations, and is therefore entitled to all reasonable confidence — but it ought to be understood that it now unites in itself, or in a portion of its members, legislative, executive and judicial powers, and that no adequate check is provided against hasty and improvident measures — that the salutary arrangement of two chambers for legislation has never been adopted — that the usual formalities of distinct and separate readings and considerations are not required — and that the great barriers against precipitation, intrigue and malversation have been neglected. A government of two houses is indis-

[10] In 1840, chapter 290, the Governor was authorized to appoint in any state or territory, and also in the District of Columbia, commissioners who were authorized to take the proof or acknowledgment of the execution of instruments intended to be recorded or used in this State.

pensable to the welfare of this flourishing community, and its Chief Magistrate ought to be selected in some other way, and rendered independent of the Common Council.[11]

It is with great regret I mention the rupture of the negotiation instituted for the adjustment of the jurisdictional and territorial limits of New Jersey and this state. The good feelings manifested by the worthy and respectable commissioners of both states, encourage a belief that there will be no diminution of friendship, and that the recent approximation to a final arrangement, will in a short time produce a complete termination of all difficulties.

That part of the revised laws relative to common schools is operative on this day and presents the system in an intelligible shape, but without those improvements which are requisite to raise the standard of instruction, to enlarge its objects, and to elevate the talents and qualification of the teachers. It is understood that Massachusetts has provided for those important cases, but whether the experiment has been as yet attended with promising results is not distinctly known. It may however be taken for granted that the education of the body of the people can never attain the requisite perfection without competent instructors, well acquainted with the outlines of literature, and the elements of science; and after the scale of education is elevated in common schools, more exalted improvements ought to be engrafted into academical studies, and proceed in correspondent and progressive ascent to our colleges.

In the meantime, I consider it my duty to recommend a law authorizing the supervisors of each county to raise a sum not exceeding two thousand dollars, provided the same sum is subscribed by individuals, for the erection of a suitable edifice for a monitorial high school in the county town. I can conceive of no reasonable objection to the adoption of a measure so well calculated to raise the character of

[11] A constitutional amendment was approved in 1833, providing for the election of the mayor of New York by the people.

our schoolmasters, and to double the powers of our artizans, by giving them a scientific education. The fixing the building in the county town, will save local conflicts; and as the execution of the law will be discretionary with the supervisors, they may advance to the object with the propitiating progress of public sentiment. That distinguished institution the high school of Livingston county, has, I am informed, so far succeeded. It already contains one hundred pupils, and its instructors have given great satisfaction.

Permit me to solicit your attention to the two extremes of education, the highest and the lowest, and this I do in order to promote the cultivation of those whom nature has gifted with genius, but to whom fortune has denied the means of education. Let it be our ambition, (and no ambition can be more laudable,) to dispense to the obscure, the poor, the humble, the friendless, and the depressed, the power of rising to usefulness and acquiring distinction.

With this view, provision might be made for the gratuitous education in our colleges, of youth eminent for the talents they have displayed, and the virtues they have cultivated in the subordinate seminaries. This would call into activity all the faculties of genius — all the efforts of industry — all the incentives to ambition, and all the motives to enterprise, and place the merits of transcendent intellect on a level at least with the factitious claims of fortune and ancestry.

In Great Britain, the institution of infant schools has been attended with signal benefit. This is the pedestal of the pyramid; it embraces those children who are generally too young for common schools. It relieves parents from engrossed attention to their offspring, softens the brow of care, and lightens the hand of labor. More efficacious in reaching the heart than the head, in improving the temper than the intellect, it has been eminently useful in laying the foundation of good feelings, good principles, and good habits.

An institution of this kind has been, if I am rightfully informed, established in a neighboring city, and some exemplary ladies in New York have, with that characteristic benevolence which forms the brightest jewel in the female character, devoted themselves and their merited influence to this inestimable object. Whenever such advocates for such institutions appear, they are entitled to the most liberal benefactions from individuals, and the most ample endowments from the public. Benevolence animates their hearts, and charity governs their lives.

At the last meeting of the legislature, I recommended a monumental erection in honor of General Herkimer, and to which I beg leave to refer you.

If you concur with me in the propriety and policy of attending to this notice of an eminent patriot of the revolution, permit me to associate with it General Woodhull, another distinguished hero, who fell one of the first victims of the Revolutionary war, in defence of his country, on Long Island, in August, 1776.[12]

While adverting to the departed worthies of our war of independence, it is impossible to pass over the sufferings, the bereavements, the merits, and the claims of those who remain behind, living monuments of their own glory and of the neglect of their country. As this state suffered the most in those eventful times and derived the greatest benefit from heroic exertions, let it cast its whole weight into the scale of remuneration, and be the first to requite and the last to forget a debt of justice and gratitude, so sacred and so imperative.

We are now called upon to perform the highest duties and the most important functions which can fall to the lot of human beings — superintending the welfare, and promoting the happiness of a populous and widespreading community. It is to be hoped that we will proceed to the execution of this momentous trust with a correspondent

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12 See *post*, p. 226, for the report of an assembly committee relative to monuments to General Woodhull and General Herkimer.

appreciation, with a suitable disposition, with exalted feelings, and with energetic faculties. Every man has a right to form, to cherish, and to express his own opinions; and if errors of the understanding are to be the subject of reproach and hostility, there is no man, however upright or talented, who can escape denunciation and proscription. It is anxiously expected that our utmost efforts will be directed to heal the animosities, to soften the asperities, and to pacify the agitations of the community. We are inhabitants of the same land — children of the same country — heirs of the same inheritance — connected by identity of interest, similarity of language, and community of descent — by the sympathies of religion, and by all the ligaments which can bind man to man in the closest bonds of friendship and alliance. Let us then enter on the discharge of our exalted and solemn duties, by a course of conduct worthy of ourselves and our country; which will deserve the applause of our constituents, ensure the approbation of our own consciences, and call down the benedictions of the Supreme Ruler of the Universe.

De WITT CLINTON.

Albany, January 1, 1828.

SPECIAL MESSAGES.

January 3. To the Assembly:

"Gentlemen.— In Title 2d of Chapter 19th of the Revised Laws of last session, a standard of weights and measures is established, and is to operate on the first of January next. Before, however, it can be effectual, it will be necessary that preliminary experiments should be made, and the new standard arranged accordingly. It is therefore essential that you should make immediate provision for this object, as the season for performing the work is rapidly passing away, and there is barely time left to do it as it ought to be done.

De WITT CLINTON."

Albany, January 3, 1828.

January 4. To the Senate:

"GENTLEMEN.—I submit to you a communication from the department of state of the United States, containing certain complaints of the Minister of Great Britain, of the law of this state, relative to the public administrator in the city of New York. I have heretofore supposed that this law was salutary in its tendency to protect from depredation, the property of foreigners dying within our jurisdiction, when absent from their friends, and securing it for the benefit of their families, and that there could not be a more inapplicable similitude than to consider it in the light of a *droit d'aubaine;* but as some improvements may possibly take place in the provisions of this statute, I recommend it to your consideration, with a hope that nothing will be omitted to remove all just complaints of a friendly nation.[13]

DE WITT CLINTON."

Albany, 4th January, 1828.

The communication from the British minister stated that by the law in question the public administrator was authorized to take possession "of the effects of British mariners, who may die intestate, either on board British vessels, or on shore, within the limits of his jurisdiction, and to administer to their effects, if, after a notice of thirty days the next of kin does not appear." It was next to impossible that next of kin residing in England should appear within thirty days after the publication of a notice in New York, and upon the failure to appear, the property of the deceased was absorbed by the official charges. The minister requested a modification of the law so as to exempt the property of British sailors dying intestate, from the au-

[13] Chapter 313, passed April 21, limited the jurisdiction of the public administrator in the city and county of New York, in the case of deceased British sailors, substantially as suggested in the communication from the British Minister.

thority of the administrator, leaving the consul, or the master of the vessel at liberty to act as is usual in the ports of other countries.

January 4. To the Assembly:

"Gentlemen.— By the act to amend an act entitled 'An act regulating elections,' passed April 24th, 1823, it is made the duty of the Governor, in case of any vacancy in the office of clerk of any county, to direct a new election. In consequence of the death of the clerk of Seneca county, a proclamation was issued under the provisions of this statute; and the sixteenth of this month, and the two subsequent days, appointed for holding an election to supply that vacancy. But as the revised law relative to this subject, went into operation on the first day of this month, and there is an incompatibility between the two acts, I solicit your attention to this subject. A statute to confirm the election under the revised law, would answer every beneficial purpose, if this should be considered a case not already provided for.[14]

De WITT CLINTON."

Albany, January 4, 1828.

January 11. To the Senate: Transmitting resolutions adopted by the Legislature of Vermont declaring it inexpedient to express any opinion on the Maine proposition relative to the distribution of surplus federal revenues for internal improvements and education; also declaring it inexpedient to amend the Constitution relative to the election of President and Vice-President as proposed by Georgia, limiting the power of the House of Representatives, and by Ohio limiting the right of suffrage to free white male persons.

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14 The election of the Seneca county clerk was confirmed by chapter 64, passed March 14.

January 17. To the Assembly: Transmitting the annual report of the Adjutant General.

January 29. To the Assembly: Transmitting the annual report of the Superintendents of the Brothertown and Stockbridge Indians.

February 2. To the Assembly: Transmitting the annual report of the Commissary General.

February 2. To the Assembly: Transmitting the following resolutions adopted by the Legislature of South Carolina in December, 1827.

"*Resolved,* That the constitution of the United States is a compact between the people of the different states, with each other, as separate independent sovereignties; and that for any violation of the letter or spirit of that compact by the congress of the United States, it is not only the right of the people, but of the legislatures who represent them to every extent not limited, to remonstrate against violations of the fundamental compact.

Resolved, That the acts of congress known by the name of the tariff laws, the object of which is not the raising of revenue, or the regulation of foreign commerce, but the promotion of domestic manufactures, are violations of the constitution in its spirit, and ought to be repealed.

Resolved, That Congress has no power to construct roads and canals in the states, for the purposes of internal improvements, with or without the assent of the states in whose limits those internal improvements are made; the authority of congress extending no farther than to pass the "necessary and proper laws" to carry into execution their enumerated powers.

Resolved, That the American Colonization Society is not an object of national interest; and that congress has no power in any way to patronize or direct appropriations for the benefit of this or any other society.

Resolved, That our senators in congress be instructed, and our representatives requested, to continue to oppose every increase of the tariff, with a view to protect domestic manufactures, and all appropriations to the purposes of internal improvements of the United States, and all appropriations in favor of the Colonization Society, or the patronage of the same, either directly or indirectly, by the general government."

The resolutions were preceded by a report which considered at length the doctrine of state rights, and discussed the relations of the states among themselves, and as to the union under the Constitution.

February 8. To the Assembly:

"Gentlemen.—I lay before you certain proceedings of the trustees of the Rensselaer School, at Troy, by which it appears that they offer the gratuitous use of the school to the state, for the purpose of educating teachers in the application of the experimental sciences to agriculture and the useful arts. The importance of the subject, and the liberality of the offer, will, I am persuaded ensure your attention to this communication.

De WITT CLINTON."

Albany, February 8th, 1828.

February 11. To the Assembly:

"Gentlemen.—I have the honor to lay before you an interesting communication from Judge Irving of New York, relative to the administration of justice in that city: and I am persuaded that you will find the suggestions of that intelligent and respectable magistrate, worthy of your particular attention.[15]

De WITT CLINTON."

Albany, February 11, 1828.

The communication was from John T. Irving, one of the judges of the court of common pleas of New York. He referred to the recent increase in the number of actions for slander and assault and battery, saying that 238 cases had been tried before him involving costs and

[15] In 1840, chapter 386, costs in the actions mentioned by Judge Irving (slander and assault and battery) were limited to the amount of the verdict, unless the plaintiff recovered $50.

other expenses amounting to at least $25,000, and that the aggregate recovery was $5,777.83. He said that a recovery of even nominal damages carried full cost and suggested as a measure of relief that in the common pleas costs should not exceed the verdict, unless it was more than $25.

February 11. Governor Clinton died, and was succeeded by Nathaniel Pitcher, the Lieutenant-Governor.[16]

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[16] Governor Clinton had been for several months in failing health, but had attended to his public duties as usual. On the 11th of February, 1828, the day of his death, he attended to his official duties at the capitol, including the transmission of a message relative to the New York common pleas. Later in the day, while sitting in his library, he was suddenly stricken, and died almost immediately. The next day the Legislature adopted a series of resolutions on the Governor's death, providing that members of the Legislature should wear the usual badges of mourning during the remainder of the session, that his obsequies be conducted under the direction of the Legislature, and that a copy of the resolutions be transmitted to his family. The funeral was on the 14th of February.

By chapter 31, passed February 19, the expenses of the funeral were to be paid from the state treasury. By chapter 140, passed March 31, the Governor's unearned salary for the remainder of the year from the 11th of February, was appropriated to the use of his four minor children. The act contained the further provision that "in consideration of the eminent services rendered to the people of this state by the said De Witt Clinton, the further sum of $10,000 is hereby granted and appropriated to the use of the said minor children, to be paid out of the treasury on the warrant of the comptroller." Payments were to be made to the guardian appointed by the chancellor, who was also charged with the duty of investing the funds for the benefit of the children.

The editor regrets that he has not been able to obtain a portrait of Lieutenant-Governor Nathaniel Pitcher for this edition of the Governors' Messages. The autograph which appears below on this page was copied from one of the laws signed by Mr. Pitcher while he was Acting-Governor.

Nath.l Pitcher

NATHANIEL PITCHER, Lieutenant-Governor.

FIRST MEETING—CONTINUED.

Governor De Witt Clinton died February 11, 1828. The Constitution, Art. 3, sec. 6, provided that on the death of the Governor "the powers and duties of the office shall devolve upon the lieutenant-governor for the residue of the term." On the death of Governor Clinton the Lieutenant-Governor, Nathaniel Pitcher, became acting governor, and continued as such during the remainder of the calendar year. He did not take an oath of office as Governor. The Senate journal describes him as Lieutenant-Governor, and the Assembly Journal as Acting Governor.

SPECIAL MESSAGES.

February 18. To the Assembly: Lieutenant-Governor Pitcher transmitted the annual report of the Governors of the New York Hospital.

February 19. To the Senate: Transmitting a long report adopted by the Legislature of Georgia, protesting against the power assumed by Congress "to encourage domestic manufactures, and to effect a system of internal improvement within the states," asserting that an "increase of tariff duties will and ought to be resisted by all legal and constitutional means, so as to avert the crying injustice of such an unconstitutional measure," and closing with a resolution giving "due notice that Georgia, as one of the contracting parties to the federal constitution, and possessing equal rights with the other contracting party, will insist upon the construction of that instrument contained in said report and will submit to no other."

March 1. To the Senate: Transmitting the following resolutions adopted by the Legislature of Ohio relative to the resolutions from South Carolina contained in the special message of February 2:

"*Resolved,* (by the general assembly of the state of Ohio) That to the general propositions contained in the first resolution, abstracted from definite questions of constitutional right or power, this general assembly perceive no grounds of exception.

Resolved, That this general assembly do not concur in the opinion of the legislature of South Carolina, as expressed in the second, third and fourth resolutions; and to the doctrines therein contained, this general assembly express their most solemn dissent."

March 19. To the Senate:

"GENTLEMEN.—Among the duties devolved by the constitution upon the person administering the government, that of 'taking care that the laws are faithfully executed,'* is perhaps the most important. A large portion of the inhabitants of the state, has been for more than a year highly excited by the alleged forcible and clandestine removal of a citizen, and by the uncertainty of his fate. It is believed by many that he has been murdered, and it is certain, that if alive he is held in captivity. This outrage upon our laws has justly alarmed our fellow-citizens, in that part of the state, and has produced exertions such as might have been expected from freemen conscious of their rights and determined to maintain them, to develop the mysterious transaction, and to bring the offenders to justice. As yet their efforts have failed. The rewards and inducements heretofore proffered for a discovery, have been unavailing. The trials and convictions that have taken place, have rather increased the mystery of the trans-

* Const. 1821, art. 3, § 4.

action. The efforts of individual citizens, stimulated by a patriotic zeal, have not always been guided by discretion, and there is reason to fear that they have sometimes tended rather to prevent than promote a judicial development of the truth. It is publicly stated that a witness while on his way to attend the trial of some of the persons charged with a participation in the original outrage, has suddenly and unaccountably disappeared, and advertisements offering rewards for his discovery have been extensively circulated. If there be any foundation for this suggestion, it affords a strong reason for the adoption of proper measures, to quiet the alarms of our fellow citizens. Under these circumstances, it has appeared to me important that such constitutional measures as may be within the power of the legislature, should be adopted, in order to facilitate the discovery and punishment of the offenders. It is equally due to the violated majesty of the laws; to the apprehensions of our fellow-citizens, which never can or ought to be satisfied, until justice is obtained, and to those who have been or may be included in the general and vague suspicions, which are always produced by such transactions. It is an imperative duty to the innocent, that those really guilty should be detected and punished.

Without intending to encroach upon the peculiar duties of the legislature, I respectfully recommend, in accordance with these views, that a law be passed authorizing the appointment of a competent person, for the special purpose of investigating the alleged criminal transactions in relation to the removal of William Morgan, and all the incidents connected therewith; that the powers of district attornies be also vested in him; that it be made his duty to repair to the places where the offences were committed —to examine witnesses, to enter complaints; to cause witnesses and parties implicated to be bound over to appear; to conduct all criminal prosecutions which may be instituted, and to perform all other acts and duties which shall

be necessary to a full and fair judicial investigation and determination of the alleged offences.

That our government is adequate to the punishment of crimes and the protection of innocence, is the belief of all who are best acquainted with its principles. Hitherto, justice has been administered without any arbitrary stretch of power, or any violation of constitutional principles by the constituted authorities, and without the interference of any private citizens not clothed with public authority. By exerting the power of the government in a constitutional manner, we can show that the present instance need not form an exception to the general course of justice. All experience teaches us, that designing men will be found ready, always, to avail themselves of a strong and honest public feeling, to pervert it to their own selfish purposes. Any such attempts will be most effectually prevented by the interposition of the government; because it will then be perceived that all individual interference will be unnecessary. Then the public mind will be preserved from unnecessary agitation and prejudice, fair and impartial trials will be secured to those who may be accused, and the course of justice will be uniform, steady and effectual. Calm inquiry will succeed feverish conjecture, deliberate decision will take the place of impatient prejudice, and the impartial, unbiased judgment of independent juries will vindicate the law and establish the vigor and efficacy of our institutions.[17]

NATH'L. PITCHER."

Albany, March 18th, 1828.

April 21. The Legislature adjourned to meet again the 9th of September.

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[17] The Senate judiciary committee presented a report on the 21st of March, concerning the Morgan matter, and said that in view of the fact that incidents connected with the alleged abduction occurred in several counties, no one district attorney could make the needed investigation. The committee therefore submitted a bill which was passed and became chapter 212, on the 15th

SECOND MEETING.

The Legislature met the 9th of September, pursuant to adjournment.

SPECIAL MESSAGES.

September 15. To the Legislature:

EXECUTIVE CHAMBER, *Sept.* 15, 1828.

"GENTLEMEN.—I have received from His Excellency the Governor of Virginia, a new and elegant map of that state. I have also received from the Governor of Missouri, a new map embracing the States of Missouri, Illinois, and the Arkansas territory. These maps have been transmitted for the use of the state, are now suspended in the executive room, but subject to the disposition of the legislature.[18]

NATHANIEL PITCHER."

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of April, under which the Governor was authorized to employ and appoint a competent lawyer, "to institute inquiries concerning the abduction of William Morgan, and his fate subsequently, and all the incidents connected therewith." To ascertain the names of witnesses, procure their examination before magistrates and needed process for the apprehension of persons implicated, assist in the preparation of indictments, and superintend the trials with the same authority as the attorney general. The person so appointed was vested with all the powers of the district attorney, and might attend any grand jury for the purpose of presenting evidence, and procuring an indictment, and he might issue subpœnas requiring the attendance of witnesses at courts of oyer and terminer and general sessions of the peace.

Daniel Mosely of Onondaga county was appointed counsel under this act, which by its terms was to expire on the 1st of May, 1829.

[18] The Legislature adopted the following concurrent resolutions in relation to the maps:

"Resolved, That the map of the State of Virginia, received from the governor thereof, for the use of the state, be suspended in the Senate chamber; and that the map of the states of Missouri and Illinois, and the Arkansas territory be suspended in the Assembly chamber.

Resolved, That the Governor be requested to transmit (at the expense of the state), to the Governors of Virginia and Missouri, each a superior bound copy of the map and atlas of this state, compiled by David H. Burr, whenever the same shall have been published, for the use of those states respectively."

September 16 and 17. Transmitting to the Senate and Assembly respectively, the 7th volume of the laws of the United States which had been received from the secretary of treasury.

December 10. The Legislature adjourned without day.

REPORT ON MONUMENTS TO GENERALS WOODHULL AND HERKIMER.

On the 25th of March, 1828, an Assembly committee presented the following report relative to monuments to General Woodhull and General Herkimer (*ante*, p. 214):

"They have felt the solemnity of the duty they have been called upon to perform — solemn, because connected with other times, and hallowed by being associated with the chivalry of our country.

It is not necessary for the committee to detail all the interesting events of the lives of those whose virtues and patriotism they might desire at once to emulate and perpetuate, but they venture to beg the indulgence of alluding to a few of the most prominent.

While the chronicles of history assign the causes which induced some of the colonies of America to break the bond of allegiance which bound them to the British throne, and establish themselves among independent nations, the remembrance of the toil, suffering and death of many of those men who were called upon to perform distinguished parts in that revolution, devoting themselves an early sacrifice to the cause they espoused, has been overlooked and forgotten. Perhaps in no instance has this occurred to a greater extent than in relation to Gen. Woodhull.

Inheriting the spirit of freedom from distinguished ancestors, who early fled from European oppression, and possessed of talents to be useful to his country, he commenced the profession of arms in the colonial wars which termi-

nated only by the peace which ensued. Retiring to private life with the approbation of his country, he cultivated social virtues, and enjoyed the pleasures of his domestic circle, until we discover him in the legislative councils of the colony of New York, in times of the greatest difficulty, and at last in the presidential chair of the provincial convention assembled at Harlaem in 1776 to form a constitution for this state.

At this critical moment, the organized design of the British cabinet to crush at a single blow what they significantly called 'the rebellion in the colonies,' was about to be commenced under the direction of Lord Howe, who had already landed on Long Island with the boasted force of British armies, seconded by foreign mercenaries.

To oppose the conquest and pillage of his home, Gen. Woodhull was commissioned by the convention to raise his friends and take the field, from which, having removed the property of the inhabitants and some of the supplies of the army, he was among the last to retire.

The events which followed, are known and regretted. Gen. Woodhull, with others, was captured, and having surrendered himself a prisoner of war, was insultingly required to appeal to God to 'save the King.' His pious and patriotic answer, 'God save us all,' produced the inhuman massacre of this hero, so worthy of a better fate.

It is represented in a memorial referred to your committee, signed by some of the cotemporaries of Gen. Woodhull, that this wanton outrage, this foul stain upon the boasted magnanimity of the British soldier, produced a strong sensation of horror throughout the colonies, and made an impression on their minds which can only be effaced with their lives.

In the dark and gloomy period of the subsequent year, when the force of the British army and their savage allies seemed to be concentrated at points on the northern frontier, to act in concert with those on the coast of New England, and to prosecute a cruel and undistinguished war-

fare in their progress through the interior and along the valley of the Mohawk, marking their track with the deep traces of the tomahawk, and leaving the smoking ruins of peaceful dwellings the memento of savage warfare, opposed only by feeble defences for the then new and enterprising settlements,— then it was that the gallant Gen. Herkimer stepped forth in defence of his altar and his country. By his personal influence, and the requisition of authority, he was enabled to raise a force among his friends and neighbors, sufficient to take the field with the show of resistance, and with the hope of relieving the besieged Fort Stanwix from the danger which surrounded it. In this he succeeded, though he fell with most of his companions before he realized the fruition of success.

On the 6th of August, 1777, he fell into an ambuscade near Oriskany and fought one of the most bloody and fatal battles, considering the numbers engaged, which is recorded in the annals of that trying period. Friends and foes there fought arm to arm and face to face, indiscriminately mingling their blood upon the field. In this action, Gen. Herkimer received a mortal wound, of which he shortly after died at the ' Herkimer place,' and was buried near that mansion, now in the town of Danube, undistinguished by any memento to point the inquiring traveler to the consecrated ground.

The committee cannot conceal the fact, that the condition of that part of the country, at this period, was deplorable in respect to the patriotism of some of its principal inhabitants, and that Gen. Herkimer, in deciding upon the course of his conduct, severed the ties of kindred, burst the bonds of early friendship, and opposed himself to the influence of wealth — to the allurements of honors and distinctions held out by powerful enemies — preferring the imperishable glory of a patriot to the pomp of adventitious titles and the renown of stars and garters.

The benefits of this action were felt and appreciated.

The march of the enemy was impeded — the siege of Fort Stanwix was raised, and its brave defenders saved, some of whom still survive in the full measure of their country's prosperity. The intended junction of the hostile forces on the Hudson was prevented.

In consideration of the eminent services of Gen. Herkimer, and the devotion with which he shed his blood in this action, the continental congress, on the 4th of October, 1777, resolved to erect a monument to his memory, and appropriated $500, to that purpose, requesting the state of New York, to carry their resolution into effect. The peculiar state of the country and its finances, at that time, probably prevented its immediate execution, and until recently, your committee regret to say, it seems the subject has not attracted public attention. The committee beg the indulgence to add the remark, that the policy of commemorating the heroic deeds of fallen patriots, is cherished by most civil governments, as strengthening the bond of allegiance, promoting to honorable emulation those whose ambition leads to the welfare, the honor and the prosperity of their country. Therefore,

In consideration of the distinguished services rendered to this state by Generals Herkimer and Woodhull during the American revolution, the committee, in pursuance of the recommendation of his excellency the late Governor, respectfully ask leave to introduce a bill to provide for the erection of suitable monuments to their memories, as a perpetual testimony of the estimation of those services by the people of this state."

See 1827, note 17.

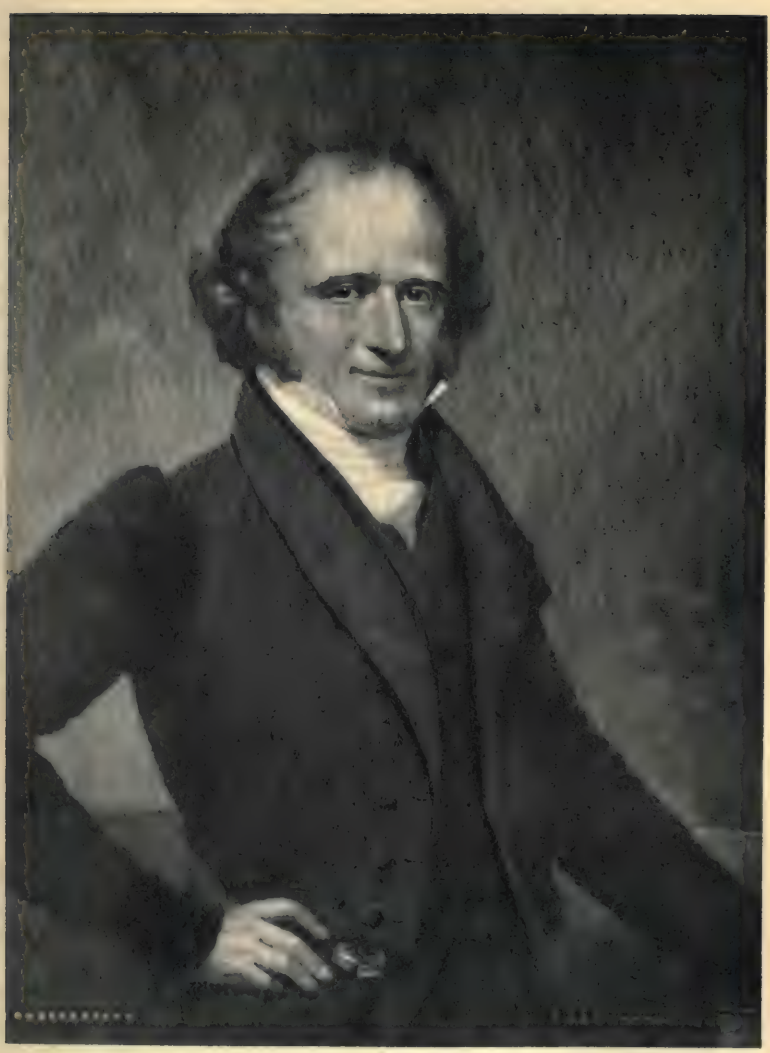
MARTIN VAN BUREN, Governor.

ANNUAL MESSAGE:

FELLOW CITIZENS OF THE SENATE AND ASSEMBLY.—I approach the high trust committed to my care, with a profound sense of the unmerited honor conferred upon me by the people, and an earnest solicitude to fulfil the obligations of gratitude which their favor has imposed. Associated with these feelings, is a consciousness of inferiority to that accomplished statesman, whose sudden removal from the post to which I have been called, excited the unfeigned regrets of the whole American people. These feelings are also greatly increased by the reflection, that my illustrious predecessor was himself preceded in this responsible station, by a succession of worthies, whose names and services are identified with the history of our state, and engraven upon the hearts of our people.

But relying, as I know I may, upon your able and patriotic co-operation; trusting to the indulgence of my fellow citizens; and looking for direction and support to that kind Providence, by whose favor the humblest instrument may be made to accomplish the greatest ends, I pledge myself to you and our constituents, to make every effort of which I am capable, to promote the interest and advance the honor of the state.

In discharging that portion of the constitutional duty of the Executive, which consists in an obligation to communicate to the legislature at every session, the condition of the state, it is a source of sincere pleasure to have it in my power to congratulate you, upon the great and almost unmingled prosperity which we have enjoyed during the past



M. Van Buren

year. It would be superfluous to dilate upon the particulars of the general welfare, when addressing you, who come directly from the bosom of society, with full opportunities of observing the condition of the state — a condition certainly not surpassed in all that makes a country prosperous and its people happy, and which demands, as it will assuredly receive, our humble and grateful thanks to the Giver of all Good.

An absence from the state for the greater part of seven years; the want of official or other opportunities, to make myself fully acquainted with that portion of its various interests subject to your particular care; together with a desire not to occupy more of your time by this communication than is necessary, will induce me to call your attention at present to such topics only, as are of paramount importance, and fall within the appropriate range of state legislation.

In relation to many of these topics, and indeed to all the great interests of the state, your duties will be greatly lessened by the entire revision of our statute laws, which has been so recently brought to a close. Of the success and usefulness of this great work, it would, perhaps, be premature to speak; but it is a satisfaction to know, that those who have had the best means of judging, and are well qualified to decide, concur in commending the distinguished ability with which it has been performed, and anticipate with confidence, that it will be a source of great and enduring benefit to the state. Some unavoidable embarrassments will probably be found in the incipient stages of its operation; but that our most sanguine expectations will be realized in the end, there can be but little doubt. The unsurpassed zeal and assiduity of the learned and capable revisers who have been employed in the work, and the great industry and patriotic devotion of the two successive legislatures who have passed upon their labors, have been witnessed by all, and are, in an eminent degree, entitled to the approbation and thanks of the state.

The first subject that naturally presents itself to your consideration, is the condition of the finances of the state. The public funds are, the General Fund, the Literature Fund, the Common School Fund, and the Canal Fund.

Since the year 1825, we have had no state tax of any description. The expenses of the government are charged upon a revenue principally derived from the General Fund. The capital of that fund is $1,670,740. For a few years past, this revenue has not been sufficient to defray these expenses. It appears to have been the policy of the state, to supply this excess of expenditure over the income, by appropriating a portion of the capital of the general fund to that object, rather than resort to the renewal of the state tax, or the imposition of other direct burthens upon the people. It is left to the wisdom of the legislature, to sanction the policy of permitting, as has heretofore been done, this annual and necessarily increasing deficit, to be supplied by a corresponding reduction of the capital of the general fund; or to provide an addition to the present revenue, that shall make it fully equal to the charges upon it.

The Literature fund is $331,609.82; and its revenue for the current year, is estimated at $21,074.48. The management of this fund, and the distribution of its income, are entrusted to the Regents of the University; under such restrictions, however, as to make the incorporated academies, and seminaries other than colleges, subject to the visitation of the regents, the exclusive objects of this munificent benefaction.

The productive capital of the Common School Fund, is about $1,700,000. Although the revenue has not, in any past year, been quite sufficient to pay the appropriation of $100,000, directed by law to be annually distributed to the common schools; it is believed that it will exceed that sum the present year.

The income of the Canal Fund for the year which has just terminated, can not at this time be precisely ascer-

tained; but it is estimated to be about $1,210,387; of which $833,000 have been derived from tolls. The compensation paid to the various officers employed on the canals, the interest on the canal debt, and the expenses for repairs and damages, have amounted to about $790,632.

The present canal debt is $7,730,155.99. No part of it is payable till 1837, and the greater part of it not till 1845 and 1846. Since the completion of the Erie and Champlain canals, the commissioners of this fund have been enabled, from its surplus revenue, to discharge $384,615 of the canal debt, by paying a loan that became due, and by purchasing and extinguishing a part of the stock of loans that are not yet reimbursable; and they have now on deposit, and invested in other stocks, $625,982. The revenue of the last year has been sufficient to defray the expenses of keeping the canals in a good condition; to pay the interest on the canal debt and the salaries of the officers and agents employed on them; and to yield a surplus of $419,055; and there is most abundant reason to anticipate a like favorable result for the present year.

It was reasonable to expect that the success which has so happily crowned our efforts in the great work of internal improvement, should lead to earnest solicitations for its continuance. Several applications embracing that object, have consequently been made to former legislatures, and will be renewed at the present session. The propriety of recommending them to your support, has been suggested to me particularly by the friends of the State Road, and the Chemung and Chenango canals; objects which have already occupied the attention of the legislature, and excited a deep interest in the public mind. The applicants for the Chenango canal, have transmitted to me a report from Mr. Wright, an engineer of great celebrity and acknowledged capacity. This report (which will doubtless be laid before you) is founded upon a review of the surveys, charts and estimates of other engineers, aided by a personal examina-

tion of the route of the canal, and throws new and very encouraging light upon that subject.[1] But destitute as I am of that full and precise information, which alone would justify me in forming an opinion on particular applications, my duty, in the light in which I regard it, will be better discharged by submitting to you a general view of the considerations which ought to influence our deliberations.

In relation to the policy of applying such portions of the means of the state (including a judicious use of its credit) as can be spared from other necessary objects, to works of internal improvement, there cannot, I think, be any serious diversity of opinion amongst us. Whatever attempts may be made to divide us into parties upon this subject, it is nevertheless true, that so great is the concurrence of opinion thereon, that it is extremely improbable that a single well-informed citizen can be found, who is justly obnoxious to the charge of hostility to measures of that character.

Differences of opinion do, it is true, exist, as to the source from which, according to the true construction of the federal constitution,[a] rightful authority to prosecute works of this description, can alone proceed — as to the expediency of that authority being vested in the federal or state governments, arising from the supposed relative capacities of those governments to carry them on with advantage — and as to the practicability and expediency of particular schemes. It would be strange indeed, if diversities of sentiment upon these points were not to be found. But their existence in no degree militates against the general position I have advanced.

It deserves to be considered how far the claims now made

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[1] Construction of the Chenango canal was provided for by chapter 72, passed March 24, which among other things authorized the canal commissioners to borrow $1,000,000 for this purpose. The canal was to run from Binghamton, through the valleys of the Chenango River and the Oriskany and Sawquoit Creeks, intersecting the Erie canal near Utica.

[a] U. S. Const. art. 1, § 8, clauses 3, 18; 10th Am.

in this respect, are fortified by the course which has been heretofore pursued.

The Erie and Champlain canals were undertakings of the greatest magnitude, involving, in their commencement, a hazard, and in their completion, a responsibility, on the part of the whole people of this state, of unprecedented extent. Although the advantages that have resulted from their construction are gradually diffusing themselves over almost every part of the state, it must in candor be admitted, that all are not equally benefitted by the facilities they afford. These considerations are relied upon, and not without reason, as justifying a claim, that the local advantages derivable from such improvements, should be equalized, as far forth, and as rapidly, as can be done, consistently with the localities and a proper regard to the ability of the state. We must not, however, be unmindful of the imperative obligation resting upon us, to observe the utmost prudence and circumspection in our legislation upon this delicate and vitally interesting subject. The success of this state in the commencement, prosecution and completion of her public works, has exercised an important moral influence over the conduct of our sister states. It has encouraged, and is still encouraging, similar efforts throughout the Union; and it is reasonable to apprehend, that a failure here, where so far, every effort has been crowned with success, would, in addition to our loss at home, be productive of serious injury to the cause of internal improvement throughout the country. Whilst, therefore, we should not shrink from incurring all reasonable hazards for the benefit of those of our fellow citizens more immediately interested, no consideration, however imposing, should lead us to commit the interest and character of the state to the promotion of any undertaking, in the practicability of which there is not the clearest reason to confide, or which, when accomplished, would be of doubtful utility.

I cannot dismiss this subject without adverting to the advantages it will receive from the liberality, moderation and unprejudiced coolness of your discussions. The feelings which characterize them, will be communicated to our constituents, and a more creditable as well as a more auspicious state of things produced, than has hitherto been witnessed. There can be no reason to doubt the disposition of any representative of the people, to aid in the improvement of any portion of the state, other than that which he more immediately represents, if his judgment can be satisfied of the feasibility of the proposed measure, and that the expense of its accomplishment, would correspond with its probable utility, and be suited to the means of the state. The free spirit of our political institutions, and those social and liberal feelings which should always distinguish our deliberations, allow him the exercise of his unbiassed judgment upon that point, leaving him responsible only for the purity of his motives and his fidelity in the discharge of his public duties. Any other course must be injurious to all the interests involved. If honest differences of opinion on these points, in regard to which there is frequently so much room for diversity, are allowed to alienate the affections of men, who, on other great subjects of public concern, adopt the same sentiments — if the means taken or attempted for the improvement of the state, are permitted to produce sectional jealousies and bitter local feuds — a state of feeling will be ultimately produced, destructive of the great object in view, and deeply mortifying to all who have the honor and prosperity of the state sincerely at heart.

It will doubtless be attentively considered, how far the public burthens arising from the construction of works of this character, may be relieved, and the efforts of the state judiciously aided, by the encouragement of individual associations for the same purpose. The leading case in which this policy has of late years been adopted, is that of the

"Hudson and Delaware Canal Company." It gives me sincere pleasure to be able to inform you, that it has in this instance been crowned with the most cheering success. From the official statements of the company, confirmed by the personal inspection of two of the officers of the government, the Secretary of State and Comptroller, it appears that a canal, well adapted to the purposes for which it is designed, connecting the waters of the Hudson and Delaware rivers, extending eighty-one miles in the state of New York, and nearly twenty-five miles in the state of Pennsylvania, commenced by that company in 1825, was fully completed in the month of October last; and that a railroad of sixteen miles, designed to connect the canal with the valuable coal mines at Carbondale in the state of Pennsylvania, is in progress, and will probably be completed in the month of June next.

It is unnecessary that I should enlarge upon the advantages which are confidently anticipated from the construction of this work, not only to the section of the country through which it passes, but to other portions of the state, by the facilities it will afford to procure a cheap and valuable fuel; as the whole subject will be fully laid before you by the company, in support of an application which it is their intention to make at the present session. The cost of the canal is said to have been $1,875,000; of that sum, five hundred thousand dollars have been obtained upon the credit of the state, which holds for its security, the first lien upon the canal.

There is no reason to apprehend the slightest loss or inconvenience from the measure already adopted to assist this company. How far you can, consistent with other claims upon your favor, extend the relief they will ask, will, I am confident, receive an impartial examination and just decision at your hands.[2]

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[2] By chapter 346, passed May 2, the credit of the state to the amount of $300,000 was loaned to the Delaware and Hudson Canal Company.

The liberal endowments from time to time granted to our scientific and literary institutions, have added much to the character of the state, and reflected high honor on the enlightened counsels under whose auspices they were made. Although sometimes improvident, and occasionally unsuccessful, their general results have been highly auspicious to the great cause they were meant to subserve, and afford the strongest encouragement to a faithful perseverance in the same wise and liberal policy.

The more direct agency of the government in conducting the affairs of the common schools, as well as the more extensive range of usefulness that belongs to those very valuable elementary institutions, require a fuller statement of the different matters that appertain to that system, and concern its administration.

The returns in relation to them, exhibit the most gratifying results. The number of organized schools is 8,122; in which 467,947 scholars have been instructed during the past year, for an average period of eight months. The number of children between five and fifteen, in the same districts, is 439,427; showing an excess of those instructed, over the whole number between five and fifteen, of 21,317. The increase since the last annual return of those attending the schools is 26,101; and of those between five and fifteen, is 20,211. The whole amount of public money paid to the districts during the same period, is $232,772.

The question as to the renewal of the bank charters which are about to expire, will deservedly receive your early and most deliberate attention. I do not, I think, deceive myself in believing that it must become the important business of your session, upon a wise and successful disposition of which, its credit with the people and usefulness to the state, will materially depend. Having for many years ceased to have an interest in those institutions, and declined any agency in their management, I am deeply conscious of my want of that sort of information which is so important in

forming an intelligent and safe opinion upon the subject. Thus impressed, I should have contented myself with simply bringing the subject to your notice, did I not feel bound to communicate freely and unreservedly, with those with whom it is my duty to act, on a matter of such vast magnitude to our constituents.

Of the forty banks now in operation in this state, the charters of thirty-one expire within one, two, three and four years, but chiefly within two and three years. From the best information that can be derived from the returns made by the banks whose charters are about to expire, their collective capital actually paid in, amounts to fifteen millions of dollars; and the debts due to them, to more than thirty millions. The debts due from these institutions to the community, including their stockholders, may be safely estimated at about the same amount.

As to the propriety of making a final disposition of the whole subject at the present session, there appears, so far as I can learn the public sentiment, to be but one opinion. The injurious consequence that may justly be apprehended from delay, seem to have impressed every mind, and to have produced a general expectation, that the solicitude so properly felt upon this grave matter, will be relieved by your early decision.

Should your opinion correspond with this view of the matter, a question will arise as to the course which ought to be pursued under existing circumstances. The difference between that question in the present condition of things, and what it would be if you were called upon for the first time to lay the foundation of a banking system for the state, will readily occur to you. What might in that case be expedient, may now, from the length of time which the present system has been in operation, and the tendency which all pecuniary concerns have, to conform themselves to existing regulations, be found very difficult, if not impracticable. To dispense with banks altogether, is an idea

which seems to have no advocate; and to make ourselves wholly dependent upon those established by Federal authority, deserves none. If these are correct views, the only alternative would seem to be, between a renewal of the charters of the sound part of the existing banks, or to anticipate the winding up of their concerns by the incorporation of new institutions.

In support of the latter course, the idea of a state bank, with as many branches as public convenience would require, has been very properly thrown out for public consideration. If by a state bank is intended an institution to be owned by the state, and conducted by its officers, it would not seem to require much knowledge of the subject, to satisfy us that the experiment would probably fail here, as it has elsewhere. The reasons for this apprehension are so cogent in their nature, so constant in their operation, and of such ready occurrence to intelligent minds, that I shall not detain you by stating them.

Experience has shown that banking operations, to be successful and consequently beneficial to the community, must be conducted by private men, upon their own account. A state bank, with branches established upon the same principles, in other respects, as the present institutions, and in which the state should stand as a private stockholder only, would probably better subserve the interests intended to be promoted by the establishment of banks, than the present system; and if the question was a new, and in all respects an open one, would doubtless have many advocates. But we cannot close our eyes to the difficulties and pecuniary embarrassments that must result from suddenly stopping the operations of so many and such long established institutions. Of the thirty millions that are owing to them, the principal part is probably due from merchants, manufacturers, and other large dealers in their vicinity; but they in turn have their demands against persons pursuing similar business in the country, and those

again must look to their customers; thus embracing all classes of society, in the liability to contribute towards a general settlement. The amount due from the banks, especially all that portion which consists in bills issued by them, would be found scattered through the whole community.

From even this superficial view of the subject, it must be evident to all reflecting minds, that the pecuniary convulsion that must result from a compulsory close of these extensive concerns, would be neither slight in its degree, or transient in its duration. You will, I am convinced, concur with me in the sentiment, that a responsibility of so serious a character, and so fearful in its possible consequences, should not be incurred on slight grounds, or from motives of expediency in the least degree questionable. Of the inducements to such a step, it is your right and your duty to judge; and I sincerely hope, as I firmly believe, that your constituents will, in the end, have reason to rejoice, that a trust so sacred has been reposed in hands so deserving.

If you should decide in favor of renewing the charters of those banks whose solvency and present capacity to discharge all their duties, shall, after a rigid and impartial scrutiny, be found free from doubt, it will become necessary to consider the conditions upon which the new grants ought to be made.

The policy heretofore pursued, of requiring the payment of a large bonus to the state, or the performance of some specious service, as the price of bank charters, is condemned by experience. A statement of the injurious consequences that have resulted from it, cannot be necessary. The unbiased judgment of all observing and thinking men, must concur in regarding it as an expedient, from which no good has resulted. Its tendency has been, and must always be, to weaken the security of the public in those institutions, for the performance of that in which the public interest mainly consists — the faithful redemption

of their paper. Eager to obtain a charter, and stimulated by the golden harvest in view, they are most liberal in their promises. If these promises are performed, the capacity of the bank to redeem its paper is impaired, and the consideration that such incapacity is caused by the exaction of the government, not unfrequently leads to unreal dividends and fraudulent advances of the stock in the first instance, and to disreputable failures in the end; failures by which those classes of the community, who stand most in need of the protecting care of good government, are usually the principal sufferers.

Strongly impressed by these considerations, I respectfully suggest the propriety of making all the conditions you prescribe, refer exclusively to the safety and stability of the institution.

The conceded difficulty of effecting that great object through the means proposed, should not deter us from the attempt. In all our deliberations upon this subject, we should keep constantly in view the important consideration, that the solvency of the banks, and the consequent stability of their paper, is the principal and almost the only point, in which the public has much interest. Who are the particular recipients of your favor, is a matter of minor importance. The number of stockholders in comparison with the great body of the people, is so very small, and the stock is so constantly changing hands, that the equity of its original distribution becomes a comparatively unimportant matter. Our chief duty in this respect, is, to see that the farmer, when he exchanges his produce or estate — the mechanic his wares — the merchant his goods — and all other classes of the community their property or services for bank paper, may rest contented as to its value.

Provisions invalidating all confidential assignments or trusts of any description, imposing severe penalties upon acts designed to divert the funds from the appropriation which in justice and policy ought to be made of them, are

of value, but necessarily restricted in their operation. The importance of some more efficient safeguard has been felt by former legislatures, and they have endeavored to obtain it through the medium of a personal responsibility of the stockholders. But it is objected, that the practical operation of such a provision would be, to defeat the object in view, by throwing this species of property, and of course its management, into the hands of irresponsible men. When it is considered that the dividends do not always, and seldom much, exceed the lawful interest — that the responsibility which the stockholders would necessarily have to place in others, would be disproportionate to the advantages secured, and that it is rarely, if ever, possible to reach the property of those who fail, through such means, it is greatly to be feared that the experiment, if tried, would be unsuccessful. The disastrous consequences necessarily flowing from such a result, need not be stated.

You will, I am persuaded, give the subject your utmost attention; and, by the application to it of your long experience in such matters, be able, I hope, to devise some mode by which the public interest will be secured. It is unnecessary that I should say, that any plan that is proposed by you, that shall be preferable to those to which I have referred, shall receive my cordial and cheerful co-operation.

My own reflections upon this point, have derived much assistance from a sensible and apparently well considered plan that has been submitted to me, and which will, in due season, be laid before you. I have every reason to believe that the suggestions come from a disinterested source, and have the public good for their leading object. The limits of this communication will not allow me to do justice to its details, or to the argument by which it is supported. It proposes to make all the banks responsible for any loss the public may sustain by the failure of any one or more of them. It suggests provisions by which that result may be reached, as far as it respects the banks whose charters

are about to expire, and be ultimately made universal, or nearly so. The idea is not entirely new to the commercial world, although it has not heretofore been applied in this form. Most men will, upon the first impression, view it, as I certainly did myself, as presenting a rigorous condition. But it is confidently believed by competent judges, that the form in which it is proposed to enforce the responsibility — being an annual and adequate appropriation of a part of their income towards a common fund, to be placed under the control of the state — the ample supervision over the institutions, which it proposes to place under the direction of the contributing banks, in conjunction with the authority of the state — the consequent high character and correspondent circulation it would give to our paper — the expulsion from circulation of the doubtful paper which now engrosses it, and the substitution in its place of that issued by banks in full credit — with other advantages, would make the condition such as would upon more full consideration, be deemed admissible by all concerned. But of all these matters you will judge for yourselves. Every scheme submitted to you, should undergo the severest scrutiny; because, from the nature of the subject, a mistake committed in regard to it, must be more injurious than in relation to any other matter.

Our duties in this great concern, may truly be said to be full of delicacy, and surrounded by difficulties. But it is our consolation to know, that if the field of duty is beset with dangers, there are enduring honors that lie beyond it. The interest which attaches itself to the representative character, can never be greater than when a fulfilment of the trust committed to the representative, may bring him in conflict with the claims of the great monied interests of the country. Where can we find a political exhibition more truly gratifying, than to see the faithful public servant, after having turned away every approach, and put far from him every sinister consideration that could divert him from the discharge of his duty, return to his constitu-

ents, conscious that he deserves, and feeling that he possesses, their unabated confidence? I sincerely hope that such may be the good fortune that awaits our conduct. We have everything to stimulate us to perseverance and fidelity. We are members of a state that is rapidly progressing in improvement, in public spirit, and in all the attributes of a great and flourishing republic — a state, of which, without exposing ourselves to the imputation of vanity, we may be proud to call ourselves citizens. We shall, I trust, show ourselves worthy of this exalted privilege, by guarding, with sleepless vigilance, its interests, its honor, and its future glory.[3]

Allow me also to call your attention to another subject, in which the state has an interest that deserves your notice. I allude to the duties derived from sales at auction. The amount of revenue received from that source during the last year, is two hundred and fifty-seven thousand one hundred and eighty-seven dollars and forty cents; and for the last five years, has amounted to one million three hundred and nine thousand seven hundred and sixty-eight dollars and eighty cents. Its appropriation for the latter term, has been as follows: to the canal fund, one million one hundred and forty-two thousand two hundred and sixty-eight dollars and eighty cents; to the hospital in the city of New York, one hundred and twelve thousand five hundred dol-

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3 Two committees, one in the Senate, and one in the Assembly, presented reports on the subject of banks, and recommended legislation which resulted in the safety fund act, chapter 94, passed April 2. This required every banking corporation to pay into the state treasury annually, a sum equal to one-half of one per cent of its capital stock paid in, less any stock held by the state. Such payments were to continue until each bank had paid into the treasury three per cent on its capital stock. The fund was to be used in discharging obligations against insolvent banks exclusive of stock. The act also provided for the appointment of three bank commissioners, one to be appointed by the Governor and Senate, and two by the corporations subject to the provisions of the act.

Several acts were passed at this session incorporating banks or renewing bank charters.

lars; for the support of foreign poor in that city, fifty thousand dollars; and five thousand dollars to the Economical School and Orphan Asylum.

A numerous and very respectable class of our citizens, who think themselves aggrieved by the existing regulations, have applied to congress for the imposition of a federal duty of ten percentum, with the avowed design of destroying the business altogether. It is respectfully submitted, whether the amount of revenue derived from this source by the state; the valuable purposes to which it is appropriated, and the difficulty of supplying its place, should not induce you to consider, whether measures may not be adopted by you, which, whilst they save the interests of the state, would at the same time respect those of the complainants.

The leading objection that is made to the present system, is, that the business of selling goods at auction, in the mode now practised, is, to every essential purpose, the occupation of a merchant; and that therefore sales by auction, as regulated by our law, constitute a monopoly, securing all the advantages of that branch of trade to a few individuals, to the exclusion of the rest of the community. Whatever reasons may have existed at the commencement of our system, for making the privilege of selling by auction exclusive, they are certainly not very apparent at the present day. Fully convinced of the general injustice and inexpediency of commercial monopolies, and apprehending that there is reasonable cause to regard sales by auction, as at present regulated, objectionable on that score, I respectfully submit to your consideration the policy of so modifying the existing law, as to allow every citizen, who can give security for the duties, to sell at auction by wholesale only, upon a license to be obtained from some proper tribunal, to be for that purpose designated and empowered by law. Such is now the law in several of the largest states; and there is no reason to believe that their regulation has been less advantageous than ours.

That such a provision, whilst it secured and probably improved the revenue of the state, would obviate the leading objection that is made to the present system, is undoubted. It would not, however, of itself, reach all the grounds of complaint that are urged. Many of them consist of alleged mal-practices in the mode of conducting those sales, which may be reached, and can only be remedied, by state legislation. Those who object to the present system, do, it is true, attribute to it other injuries to trade, and of a character which could not be reached by any law that you could pass, short of an entire prohibition of sales by auction. The allegations that are made in this respect, may all be well founded; and the respectability of the source whence they have proceeded, leaves no doubt of the sincerity with which they have been advanced. But those who make them, are too enlightened not to be sensible, and would be too candid not to admit, how often it is, that we find measures that have become obnoxious to any portion of the community, made responsible for results which, it is found in the sequel they have had no agency in producing. This may be so in the present case; and it would at all events seem to be in season, after an experiment of the effect of the alteration now suggested, to consider what further provision is necessary, and may be adopted, with a just regard to the interests of all.[4]

I should disregard the admonitions of recent experience, and fail in my duty, were I not to bring to your notice the state of the laws by which our elections are at present regulated.

At our last election, there were polled more than 276,000 votes; a number nearly double to that of any other state in the confederacy, and constituting the largest free suffrage of any single government in the world. To protect the freedom, preserve the purity, and regulate the

[4] In 1838, by chapter 52, passed February 28, auction privileges were extended, and any citizen might become an auctioneer on depositing with the comptroller a specified bond.

exercise of such a suffrage, deserves to be ranked among the leading objects of our care. The range that is given to the influence of this privilege by our system, has no other limit than the extension of political power. Wherever the one exists, the other is felt also. Thus reaching from the chief magistrate of the Union, to the most inconsiderable municipal officer, its discreet exercise must of necessity frequently involve principles of action of a character entirely dissimilar. In some cases, great and difficult questions of national and state policy are put at issue; whilst in regard to others, it is a mere dispute as to the relative capacities of individuals for the discharge of specific duties. It is not to be hoped that electors coming to the polls under the pressure of such dissimilar motives, will exercise their privileges as discreetly as might, under different circumstances, be expected. But we are not left to conjecture upon the subject. We have complaints from numerous sources, of the injurious consequences that have resulted from the practice of choosing our federal, state, and county officers at the same time — a practice which is pursued in no other state in the Union. Many instances may be referred to, where the public mind has been wholly engrossed by the election of a county or town officer, whilst the subject of President of the United States was in a great degree lost sight of. Allow me, therefore, to suggest for your consideration, the propriety of amending our election law, in this particular, so far at least, as to direct the choice of electors of president and vice-president to be held at a time different from any other election. Recent events have made so strong an impression on the public mind, and provoked so free a discussion, in relation to our present district system for the choice of electors, as to render any observations from me unnecessary to secure your prompt attention to that subject.[5]

[5] By chapter 139, passed April 15, 1829, presidential electors were to be chosen at the annual election on a general ticket, and each voter was entitled to vote for the whole number which the state was entitled to appoint.

There is another matter connected with this subject, of a still graver character, and upon which I must ask to be indulged in a few observations. I allude to the extent to which the use of money at our elections, has increased within a few years. I do not mean to affirm, that as yet direct corruption has to any extent been practised; on the contrary, I hope that such has not been the case, nor is it necessary that the evil should have arrived at that height to require your interposition. The practice of employing persons to attend the polls for compensation, of placing large sums in the hands of others to entertain the electors, and the various other devices by which the existing laws are evaded, the cupidity of the electors strongly tempted, their principles undermined, and the elective franchise, the most valuable of all our temporal privileges, brought into disrepute, is too well known to need description. I cannot refrain from pressing the existence of these practices upon your consideration, as an evil of the greatest magnitude. Of the salutary agency of this privilege in the purification of our public councils, and its indispensable necessity to the maintenance of public liberty, no citizen can be insensible; and we should all be alive to the obligation that rests upon us, whose enjoyment of it is so unlimited, to preserve it from the dangers to which it may at any time be exposed. The allowance of such means is giving to wealth a superiority over virtuous mediocrity, that should excite apprehensions in the mind of every real friend to the equal rights of man. If the expenses of our elections continue to increase with the same rapidity that they have done for some years past, the time will soon arrive when a man in middling circumstances, however virtuous, will not be able to compete, upon anything like equal terms, with a wealthy opponent. The evil is certainly within the reach of legislation. Evasions of any law that you may pass, will, without doubt, take place; but their range can be greatly circumscribed, by the discreet and intelligent action of the

legislature. I respectfully submit it to your consideration, whether a law which should impose severe and enforceable penalties upon the advance of money by individuals, for any purposes connected with the election, except the single one of printing, would not be salutary in its consequences, and is not called for by the deep interest that our constituents have in the subject?[6]

It is unnecessary to say that these observations are not intended to have reference to any one class of men, more than another. If injurious practices have existed in this respect, it is not probable that they have been confined to any description of politicians.

I transmit herewith a report from Mr. Mosely, who was, in pursuance of an act passed in April last, and which will expire in May next, appointed special attorney, to make certain inquiries and perform certain duties, in relation to the abduction of William Morgan. Of his fate we have as yet no positive evidence; but it is certain that the laws of the state have been violated in his person, if not the highest crime committed. That an act so alarming in its character — so destructive of the peace of society, and the safety of its members — should have made a deep impression upon the public mind, ought not to surprise us. It would have been an unfavorable indication of the state of our public morals, and our respect for the laws, had it been otherwise. We have accordingly witnessed an excitement upon the subject, of great interest and extent, amongst a portion of our citizens, greatly and justly distinguished for their piety, industry and intelligence. It would not be extraordinary if attempts should be made to pervert this honest indignation of the people, to selfish and

[6] Chapter 373, passed May 5, prohibited the payment of money by or on behalf of candidates for the entertainment of voters, or for the purpose of procuring their attendance at the polls or for any other expenses intended to promote the election of any particular candidate, except for the expense of printing, the distribution of hand bills and other papers. The act also prohibited certain frauds on electors.

sinister purposes. But the character of those who really feel what they profess upon this subject, affords the best security, that the success of such unworthy schemes cannot be great, or of long duration.

It is the duty of those to whom the people have delegated the sacred trust of executing their laws, to see that no constitutional means are left unemployed, that may contribute to exonerate the innocent, and satisfy the requirements of the law, by bringing down judgment and punishment upon the heads of the guilty. Whatever portion of those duties devolves upon me, shall be discharged with diligence and fidelity. It will be for you to consider whether, to that end, any further legislation is necessary.[7]

An opportunity was recently presented to me, through the politeness of the managers of the Society for the Reformation of Juvenile Delinquents, to visit the house of refuge established by that society in the city of New York. The public are indebted for the original establishment of this institution, to the benevolence of the association; and it has subsequently, in consequence of its obvious and great usefulness, and the extension of its operations to the state at large, received the patronage of the legislature. Of its

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[7] Mr. Moseley's report contained a statement of the proceedings taken by him, and an explanation of the delays which had occurred. On the principal question involved in the investigation Mr. Moseley said:

"William Morgan, a citizen of this state, was taken from the gaol of the county of Ontario, into which he had been committed under circumstances of peculiar aggravation and cruelty; and was from thence transported, under duress of imprisonment, a distance of about one hundred and twenty miles, to the county of Niagara, and was placed in confinement in the Magazine in Fort Niagara, situated at the confluence of the Niagara river with Lake Ontario, on the morning of the fourteenth of September aforesaid."

Mr. Moseley said the testimony did not reach beyond this point. Morgan's fate had not been ascertained, "but he had offended against no law recognized in the code of any civilized nation; and was taken away without any legal process or pretence of authority."

The subject of Morgan's abduction was considered at great length in reports presented by Senate and Assembly committees. The act of 1828, providing for special counsel was, by chapter 107, passed April 6, extended one year.

salutary agency in promoting the objects of its establishment, there can be no doubt. The nature of this communication will not allow me to present you a more particular statement of its beneficial results, but they will be fully laid before you by the society, on an application which it is their intention to make for your interposition. The nature of the relief to be asked, is such as will enable the institution to conduct its operations with more stability and success, without, as the managers suppose, materially increasing the present allowance made by the state. I should do injustice to my convictions of duty, if I failed to recommend this praiseworthy establishment to the protecting care of the legislature. Permit me also to suggest for your consideration, the expediency of extending this system throughout the state, under such modifications as may be thought proper.[8]

I have been requested to present to your notice, the condition of several of the numerous institutions for the promotion of literature, science and the arts, with which our state happily abounds. Some have desired it with a view to applications they design to make for your assistance, and others from the laudable motive of bringing into more general notice, the success with which their meritorious labors have been rewarded. I have to regret that the necessary limits of this message, put it out of my power to comply with their wishes. Such as require it, will be noticed in subsequent communications, together with several other matters of public concernment upon which it may become your duty to act.

The abiding obligations to do everything within the range of our respective authorities, to protect the great interests of agriculture, commerce and manufactures, will,

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[8] By chapter 302, passed April 29, the commissioners of health in the city of New York were required to pay $8,000 annually to the Society for the Reformation of Juvenile Delinquents in New York from moneys received by them for the use of the Marine Hospital.

I am confident, be duly respected by you. In relation to the former and most important of these interests, I have been solicited to renew a suggestion made by my predecessor, submitting to the legislature the propriety of granting a bounty for the encouragement of the growth of hemp.[9] Of the effects that will be produced upon the latter by the act of congress passed for its relief at the last session, it would, I am convinced, be yet premature to judge. If its operation can derive aid from any legislation on your part, or any other advantage be obtained, it will, I am well satisfied, be your pleasure, as it will be your duty, to afford all the assistance in your power, to this great and valuable interest.

The great importance of a full and extensive publication of those parts of the Revised Statutes, which are of more general application, and in respect to which, the most important alterations have been made of the existing laws, cannot fail to occur to you, and will, I hope, receive your early attention.

My elevation to the station which, by the favor of the people, I now enjoy, makes it necessary that I should resign the office of senator in the congress of the United States. You will, therefore, please to regard this as my resignation of that high office; and allow me to accompany it with an expression of my sincere thankfulness for the undeserved honor conferred upon me by two successive appointments, and my regret that it has not been in my power to make myself more useful in the discharge of its important and responsible duties. The nature of those duties are so well understood, and so fully appreciated, that it is scarcely necessary that I should ask you, in supplying the vacancy, to remember, that there are but few if any

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9 Chapter 311, passed April 28, incorporated the Butternuts and Unadilla Hemp Manufacturing Company, for the purpose of dressing and manufacturing hemp and flax or either of them separately. No provision was made for a bounty.

public stations in this country, presenting a fairer field for the successful exercise of great talents and sound patriotism, than that now referred to.[10]

Allow me, in conclusion, to submit some observations of a more general character. That a jealousy of the exercise of all delegated political power, a solicitude to keep public agents within the precise limits of their authority, and an anxious desire to see all public expenditures under the control of a rigid and scrupulous economy, are indications of a contracted spirit, unbecoming the character of a statesman, is a sentiment that most men at some period of their lives, are prone to entertain. I cannot claim to have been always exempt from its influence. But the limited experience which it has been my fortune to have in public affairs, has abundantly satisfied me that it is a political heresy, which cannot be too soon or too effectually exploded.

It was truly said by one of my predecessors in office, who was one of the most distinguished and efficient of the civil patriots of the revolution, that "few circumstances are more essential to the duration of civil liberty and the well-being of a free people, than that the departments and officers of the government do, on the one hand, exercise on proper occasion, all the powers and authorities constitutionally committed to them;* and on the other hand, that they do not exercise on any occasion, powers and authorities which are not constitutionally committed to them." The enforcement of these excellent and saving principles, so far as they relate to most of the departments of the government, rests with you, and with the right is the duty to exercise it.

It is also a truth, confirmed by the experience of this, as well as every other country, that no people are so well served, as those whose laws exact the most strict accountability from their public servants, and enjoin frugality in

* Governor Jay, 1800, see *ante*, Vol. II, p. 465.

[10] Charles E. Dudley was chosen as Senator in place of Governor Martin Van Buren.

expenditures as a cardinal political virtue. Acting upon these principles, I do not hesitate, in fulfillment of the duties imposed upon me by the constitution, to recommend to you the propriety of a faithful survey of the existing laws relating to the powers and duties of public officers, and the enforcement, as far as possible, of strict conformity to their provisions — of limiting, as far as practicable, the range of official discretion, always remembering, that as a general rule, it cannot be confided to any one, without danger of abuse — of ascertaining whether the securities now required from those entrusted with public moneys, may not be increased — of making the instances in which the government releases those, who, forgetful of the sacred character of their trust, wrongfully apply the public funds to their own use, as rare as may be consistent with the claims of humanity — and, generally, of compelling a vigilant accountability, and strict economy in the public disbursements through all their ramifications. There is no reason to apprehend impediments to a successful administration of the government, through unreasonable jealousies upon these points. As long as public sentiment, the great lever of our political machine, remains as now, intelligent and patriotic, we need not fear that any measure with which the public interest is essentially connected, will fail of support.

Let me not, however, be understood as inculcating anything like parsimony or injustice of any description, towards the servants of the public. The difference between that course and the one I have referred to, is wide and palpable. Although it is incompatible with the spirit of our political system, that the emoluments of office should be such as to enrich the incumbents, it is nevertheless due to its character and preservation, that our public functionaries should receive a just equivalent for the services they render. It is your province to decide whether such is now, in all respects, the case. I have no reason to believe that the gross

amount received by the public officers of this state, is not an adequate recompense for their services; but I am fully persuaded that the compensation allowed by our laws, is unjustly and unequally distributed. The salaries paid to the chancellor and judges of the supreme and circuit courts, in particular, is less than what is paid to judges of the same grade in several states of the Union; and considering the expenses to which they are unavoidably exposed, I fear insufficient to save them from actual loss. I do not believe that our constituents could reconcile it to that strong sense of natural justice, by which they are influenced, to receive the entire services of any of their fellow citizens, without yielding them a compensation at least sufficient for their support; and I am yet to learn, that they would wish to see a rule applied to their public concerns, of which they would not approve in those that are personal. I have therefore no hesitation in saying, that any bill which shall correct the inequality that at present exists, and place the salaries of those to whom I have particularly alluded, upon a just footing, shall receive my cordial concurrence.[11]

The relation in which we stand to the Federal Government, occasionally imposes upon us the discharge of delicate and highly responsible duties. Of the invariable disposition of this state to sustain the federal arm, in the exercise of all its constitutional power, it would be superfluous to speak; it has been fully exemplified both in peace and in war. But whilst we thus evince our unabated loyalty to the general government, we must not be unmindful of our obligations at home, or forget that it is only to the principles upon which the confederacy was based, and which were intended to be enforced by the provisions of the federal constitution, that our support is justly due. As

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11 The act of 1835, chapter 19, passed March 4, increased the salaries of the chancellor, judges of the supreme court and circuit judges. The chancellor and each justice of the supreme court was to receive a salary of $2,500, and the compensation of circuit judges was fixed at $1,600.

the theory of our general government was without precedent, its practical operation could only, at the period of its formation, be matter of conjecture. The motives of those who framed it, were, doubtless, of the purest and most elevated character. The great question that was agitated by them, was the distribution of the powers necessary to good government between the federal and state authorities; and the conflicting speculations of the men of that day, as to what was to be hoped and feared, from those respective sources, divided them into parties, which have continued without material alteration to the present period. The experience of forty years has vindicated and fully sustained the opinions and principles of those, who, at that time, insisted that the tendency of the system would be to encourage encroachments by the federal power upon that of the states. That tendency may well be regarded as the imperfection of our otherwise most happy system, and deriving force from principles of a kindred character, it may always be expected to disturb it. But it is at the same time gratifying to have witnessed a willingness as well as a capacity on the part of the people to resist such encroachments as often as their existence becomes manifest. Of that disposition and capacity our political history records at least two prominent and illustrious instances. As long as the good spirit that triumphed on those memorable occasions is preserved, the republic will be safe. That it may always be preserved, should be the unceasing prayer of every patriot. The state governments have been justly described, by one of the best of men, as "the most competent administration for our domestic concerns, and the surest bulwarks against anti-republican tendencies"—and it is among our highest duties as the representatives of a state, certainly not the least considerable of the number, to exercise the greatest vigilance in their preservation. That those who are either regardless of the success of the republican principle, or whose love for it is merged in other con-

siderations, should decry the solicitude that is manifested upon this subject, and seek to discredit its authors, is naturally to be expected. But the sincere friends of our hitherto successful system, may well find consolation in the fact, that its defenders are neither to be deterred or intimidated by such efforts, and that the people have sustained, and will again and again, support them.

The influence of the recent contest for the Presidency, upon the success and permanency of those principles, must, for a long time to come, be of a very decisive character. Of that great struggle, it may truly be said, that if it brought with it much to regret, it has also afforded subjects for congratulation, without reference to its particular result. Ours is the only nation in the world which can fairly be said to enjoy the high privilege of selecting its chief magistrate, by the unbiassed choice of its citizens. That the exercise of a right, so interesting in its character, and so important in its results, would disturb the body politic in all its relations, was to have been anticipated, and in the present instance, has been fully realized. It is certainly true, that the reputation of the country has in some degree suffered from the uncharitable and unrelenting scrutiny to which private as well as public character has been subjected. But, on the other hand, the injury produced by this discreditable exhibition has been relieved, if not removed, by seeing how soon the overflowing waters of bitterness have spent themselves, and that already the current of public feeling has resumed its accustomed channels. These excesses are the price we pay for that full enjoyment of the right of opinion, which is emphatically the birthright of an American citizen. It is with perfect deference to that sacred privilege, and in the humble exercise of that portion of it which belongs to myself — with a sincere desire not to offend the feelings of those whose views in this respect differ from my own — that I beg leave to congratulate you, and through you, our constituents, on the result of the late election for President

and Vice-President of the United States; a result which, while it infuses fresh vigor into our political system and adds new beauties to the Republican character, once more refutes the odious imputation that Republics are ungrateful; dissipates the vain hope that our citizens can be influenced by aught save appeals to their understanding and love of country; and finally, exhibits in bold relief, the omnipotence of public opinion, and the futility of all attempts to overawe it by the denunciations of power, or to seduce it by the allurements of patronage.

MARTIN VAN BUREN.

Albany, January 6, 1829.

SPECIAL MESSAGES.

January 23. To the Assembly: Transmitting the annual report of the Adjutant General.

January 26. To the Assembly:

"GENTLEMEN.— In my communication to the Legislature at the opening of the session, I alluded briefly to the outlines of a plan suggested to me relative to the renewal of bank charters. Understanding that it was the general expectation, that a full development of its details would be laid before you by me, I have requested its author to furnish me with a more ample statement of his views; and have now the honor to transmit the communication which I have received from him.

Although this plan is of a character somewhat novel, yet as connected with the most important object of your present duties, it is at least worthy of your deliberate attention. The necessarily imperfect notice taken of the subject in my former communication, has called forth as I anticipated, expressions of disapprobation from those whose opinions are entitled to much respect. Imperfect as that notice was, it has however been sufficient to excite inquiry into its merits, and lead to favorable views of it on the part of

several well informed and capable judges. It was reasonable to expect objections from those who so much misapprehended the proposed measure, as to believe that it designed to cast on solvent banks an immediate and unqualified responsibility for all those that might become insolvent; it will now be seen that such is not the case. Instead of that immediate, undefined and unlimited responsibility, it is proposed to substitute for the payment of a gross sum to the state, which has sometimes been exacted as a consideration for the exclusive privilege granted, (and which is still advocated by several,) the creation of a permanent fund, to be held as a security against all losses which our citizens may hereafter sustain through the failure of banks. That fund is to be raised gradually, and in a manner little burthensome to the banks; to be at all times kept good by them and instead of going into the public treasury for the general benefit, is to be applied to the protection from actual loss of those of our constituents who would otherwise suffer by the failure of banks improvidently chartered by the state, or unskilfully managed by those to whom they were so granted; and whose paper, in the unavoidable state of our currency, our citizens can hardly be said to have the option to take or refuse — To this is added a system of supervision, which if fairly carried into effect, cannot fail, it would seem, to protect the contributing banks against further calls, to preserve the fund, and to give our paper currency the utmost credit and stability. That the charters of the sound portion of the existing banks ought to be renewed, appears, so far as the feelings and wishes of our constituents can be ascertained, to be the prevailing opinion. If you should participate in that sentiment, the questions that will necessarily arise, will be, whether such extension should be without new conditions; and if not, then whether the plan now proposed, or some other and better one, shall be adopted — questions, which are properly, and may safely, be left to the wisdom and justice of the legisla-

ture. All that is asked for the plan now proposed, is your full and unbiassed consideration. If it should not be approved, the suggestion of it will not have been entirely useless; it has already assisted, and will probably further assist, to give a right direction to the public mind on a very important subject, by causing the establishment of banks and their regulation to be regarded as a matter of deep public concern, from their effects upon the great body of the people, and not merely as grants made for local accommodation, or to promote the individual interests of applicants and stockholders.

It will be seen that the author has added some reflections touching the propriety of an investment of their capital by the banks, and a change in the nature and form of their discounts. His views in that respect, have been now for the first time communicated to me, and were not referred to in my message at the commencement of the session. They are expressed with great force and perspicuity; and I lay them before you, in the belief that anything calculated to throw light on a subject of such deep interest, is worthy of your consideration. [See note 3.]

MARTIN VAN BUREN."

Albany, January 26, 1829.

The accompanying communication was from Joshua Forman, and is printed at length in the Assembly journal.

January 27. To the Assembly: Transmitting the annual report of the Commissary General.

January 29. To the Senate: Transmitting a resolution adopted by the Legislature of Georgia approving the South Carolina resolutions of December, 1827, relative to the rights of the States. See 1828, special message February 2, *ante*, p. 218.

January 31. To the Assembly:

Veto of a bill entitled "An act to allow Rebecca Albro, wife of Wait Albro, of the town of Beekman in Dutchess County, to receive certain legacies left her by her grandfather."

"The petition, upon which this bill is founded, sets forth, that the petitioner was deserted by her husband, in the month of August last, he having previously conducted himself in a very exceptionable manner; that she does not know where he now is, and that since that period, a legacy has been left to her by her grandfather. Upon these *ex parte* allegations, sustained to the satisfaction of the committee, it is proposed by the bill to divest the husband of the petitioner of his acknowledged legal rights, without giving him an opportunity to be heard in their defence. I have no reason to doubt the equity of this application, or to question the good faith in which it is made, and my objections to the proposed relief do not, therefore, arise from a supposition that in this case, positive injustice will be done to the absent party. It is because I consider the provisions of the bill objectionable in principle, and from an apprehension of its injurious influence on the score of precedent, that I am constrained to withhold my approval thereof. The constitution declares that 'no member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.'[b] Although the general object of this provision was designed for the protection of our citizens charged with offences, its spirit is justly applicable to every case of private right. By 'the law of the land,' is to be understood the general law, applying equally to all citizens, and to be administered through the instrumentality of the judicial power, and not to mere private acts, without the intervention of previous judicial enquiry. To refuse legislative aid in every case where competent

[b] Const. 1821, art. 7, § 1.

relief can be afforded by the established judicial tribunals of the country, ought therefore to be regarded as an established axiom in legislation. It will be seen by the communication of the chancellor, herewith transmitted, that such relief can be afforded in the present case. It would doubtless save the petitioner some expense to obtain redress through the channel she has selected, and if, in other respects allowable, our feelings for her sex and condition should induce us to grant it. But that consideration is not sufficient to justify us in unnecessarily and definitively passing upon the rights of a citizen in his absence, and without an opportunity of being heard, and in confounding the appropriate duties of separate departments of the government, the action of which should be kept distinct, as far as may be practicable. It is not intended by these objections to raise the abstract question of the power of the legislature in the premises. I am aware that many private acts have already been passed, that conflict with the principle I advance; but I am also aware that the increase of legislation upon private rights, under various and imposing representations of hardships and inconvenience, has in the judgment of observing and respectable men, become an evil calling for restraint rather than extension."

NOTE.—In the accompanying communication, Chancellor Reuben H. Walworth, expressed the opinion that the Court of Chancery could provide for the support of Mrs. Albro, and her children out of the legacy without legislative aid, and that in a proceeding for that purpose the husband would have a right to be heard.

The bill was not passed over the veto.

February 3. To the Assembly: Transmitting resolutions adopted by the legislature of South Carolina, reiterating the views expressed in the resolutions adopted in 1825 and 1827 concerning the powers of the federal government over the States, and particularly protesting against the tariff act of 1828.

February 12. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

March 2. To the Assembly: Transmitting a communication from the War Department, requesting the cession of additional land purchased by the United States for use in connection with the Watervliet arsenal.[12]

March 2. To the Assembly:

"GENTLEMEN.—I have been requested by a committee of the 'New York Law Institute' to lay the accompanying papers before the legislature. The chancellor's reply fully confirms the impression, which is, I believe, universal with the profession, that the relief prayed for, is indispensable to the due administration of justice. Allow me, therefore, to recommend the subject to your early and favorable consideration.[13]

M. V. BUREN."

Albany, March 2d, 1829.

The accompanying memorial recommended the appointment of a vice chancellor for the first circuit.

March 3 and 4. To the Assembly and Senate respectively:

"GENTLEMEN.—In the communication which I had the honor to make to the legislature at the commencement of the session, I apprised you that the act authorizing the employment of counsel to assist in the prosecution of persons charged with the abduction of William Morgan would expire in the month of May next. I have since appointed John C. Spencer, Esq. to be such counsel, in the place of

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12 The cession of additional land for the Watervliet arsenal was made by chapter 332, passed April 20, 1830.

13 An assembly committee in a report submitted March 18, recommended the creation of the office of vice chancellor for the first circuit, but no act on the subject was passed at this session. Chapter 16, passed January 28, 1831, created the office, and prescribed its duties. This vice chancellor was required to reside in the city of New York.

Daniel Moseley, Esq. who has resigned the same in consequence of his appointment as circuit judge.

In a letter from Mr. Spencer, addressed to a member of the Senate and communicated to me, he recommends a continuance of the act for another year, expresses his opinion that no alteration in it is expedient or necessary, and adds, that the continuing it in force ought to be disconnected with any provision or proposition whatever. In a more recent letter received from him by me, he repeats his convictions of the urgent necessity that the act should be kept in force for at least one year longer, and requests me to recommend the subject to your attention.

Believing the original measure to be a very proper one, and concurring fully in the views expressed by the special attorney, I take the liberty of soliciting your early and favorable attention to the subject. [See note 7.]

M. V. BUREN."

Albany, March 3d, 1829.

March 12. To the Assembly:

"GENTLEMEN.—I have the honor to lay before you a letter from Mrs. Elizabeth Hamilton, first directress of the Orphan Asylum of the city of New York, together with a petition soliciting the aid of the legislature. The facts stated in the communication signed by this venerable and worthy matron, showing the successful operations of the institution over which she presides, and in the prosperity of which she takes so lively an interest, reflect the highest honor on those to whom its affairs have been entrusted; and cannot, I am confident, fail to secure the early, respectful, and favorable consideration of the legislature.[14]

MARTIN VAN BUREN."

Albany, March 12, 1829.

The journal does not contain Mrs. Hamilton's letter.

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[14] Chapter 159, passed April 17, 1829, revived the act of 1807, incorporating the Orphan Asylum Society in the city of New York, and continued it in force until the 1st day of January, 1860. The act also confirmed the recent election of trustees, and contained details relating to administration.

GOVERNOR VAN BUREN'S RESIGNATION.

March 12. The Governor sent the following communication to the Senate and Assembly:

"GENTLEMEN.—The President, with the advice and consent of the Senate, has appointed me Secretary of State of the United States; and I have felt it my duty to accept the unsolicited and distinguished honor which has thus been conferred upon me.

This decision makes it necessary that I should resign the office of Governor of this State, to which I have recently been elected.

The high and just distinction universally accorded to this office, and the flattering manner in which it was bestowed upon me by the people, are of themselves sufficient to impose upon me, in the step I am about to take, a responsibility of the most impressive character. But these considerations, imposing as they are, are greatly enhanced by the deep consciousness I entertain of the many and unmerited favors conferred upon me by this my native state — favors which have excited on my part feelings of gratitude, that will, I hope, be as permanent in their influence, as they were just and sincere in their conception. The latter portion of my public life having been chiefly devoted to the affairs of the general government, I indulge the hope that the place to which I have been called, will enable me to make myself more useful, not only to our fellow citizens of the Union, but to the people of this state, than I could be in my present station. For although the state of New York, from the extent of her territory, the abundance of her resources, and the magnitude of her population, possesses in herself the elements of a great empire, and already presents interests deserving the highest care; yet, under our confederated system, these very considerations give to her a paramount interest in the just operation of the federal government. It is therefore under the full conviction that our constituents are at least as deeply inter-

ested in the successful conduct of the important affairs with which I am hereafter to be connected, as in the administration of those which appertain to the chief magistracy of this state, that I have come to the conclusion already stated. And with these impressions as to the course of public duty, I do hereby resign the office of Governor of the state of New York, together with that of Regent of the University thereof.

The few months, during which the executive power has been entrusted to my hands, have been sedulously devoted to the service of the state, though I cannot flatter myself, so far as I am individually concerned, that much has as yet been done to promote the public good. I have, however, the best reasons to hope for the most beneficial results to our constituents from our joint labors, and more especially from the efforts which you will continue to make in this respect. This confidence is justly increased by the conviction that I leave the executive department in the hands of one with whose character and qualifications I have long been intimately acquainted. If ample talents, and a sound discriminating judgment—if integrity and singleness of purpose, and truly republican principles, furnish any just grounds for expecting a safe administration of the government, that expectation, I am persuaded, may, in the present instance, be fully indulged.

Having thus surrendered the trusts with which I have been honored, allow me to tender you my sincere acknowledgments for the uniform courtesy and kindness with which you have co-operated with me in the discharge of our public duties; and let me add the assurance, that in whatever situation I may be placed, the interest and the glory of New York, shall be the objects of my unceasing solicitude and most vigilant exertions.

MARTIN VAN BUREN."

Albany, March 12, 1829.

On the receipt of the Governor's resignation, the following resolutions were adopted:

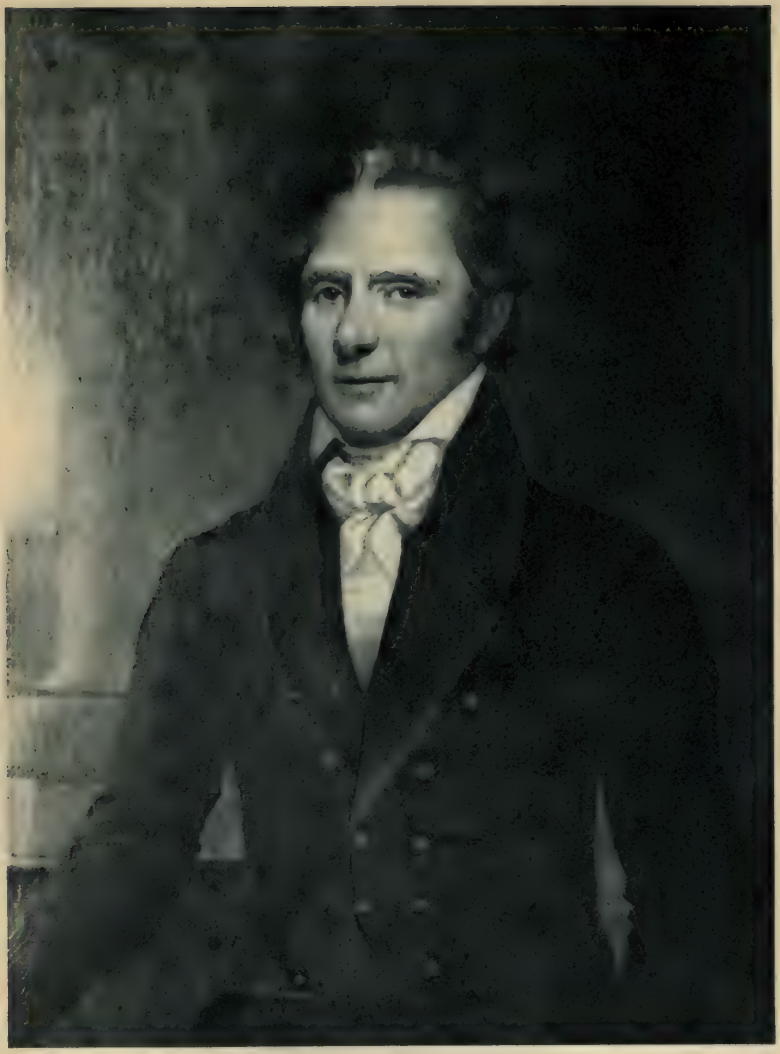
By the Senate:

"*Resolved,* That the Senate have witnessed the fidelity and distinguished ability with which his excellency Martin Van Buren has discharged the duties of the office of Governor of this state; that they entertain the highest respect for his virtues and talents, and tender to him their earnest wish that he may enjoy a full measure of happiness and prosperity in the new sphere of public duty to which he is about to be removed.

Resolved, That whilst the Senate entertain a deep sense of the loss which the councils of this state will sustain in the resignation of her late distinguished chief magistrate, they are free to express their decided approbation of the decision he has made; and they cherish the confident expectation that the interests of this state, and of the whole American confederacy, will receive permanent advantage from the application of his talents to the arduous and important duties to which he has been called."

By the Assembly:

"*Resolved unanimously,* That the congratulations of this House be presented to His Excellency Martin Van Buren, late Governor of this State, on his appointment to the office of Secretary of State for the United States; and that while we deeply feel our separation from one with whom we have been associated in the discharge of important public duties, as well as in social and friendly intercourse, we cannot forbear to felicitate the republic on the acquisition of his services in the councils of the nation."



E. F. Throop

ENOS T. THROOP, Lieutenant-Governor.

FIRST MEETING — CONTINUED.

Governor Van Buren resigned on the 12th of March, to become Secretary of State in the Cabinet of President Andrew Jackson. He was succeeded by the Lieutenant-Governor, Enos T. Throop, who assumed and continued to perform the duties of Governor as provided by the Constitution during the remainder of the term for which Governor Van Buren had been elected, which expired on the 31st of December, 1830. He did not take an oath of office as Governor, but as Lieutenant-Governor performed the duties of the higher office. The Senate journal describes him as Lieutenant-Governor, and the Assembly journal as Acting Governor. At the general election in 1830, Mr. Throop was elected to the office of Governor for the term beginning January 1, 1831.

SPECIAL MESSAGES.

March 12. On the presentation of Governor Van Buren's resignation in the Senate, and the adoption of resolutions relating thereto, Lieutenant-Governor Throop delivered the following address:

"GENTLEMEN OF THE SENATE.— By the resignation of his excellency the Governor, which has just been read, the executive duties devolve upon me for the residue of the constitutional term.[c] This event, which deprives the state of the services of the distinguished individual, whom she had

[c] Const. 1821, art. 3, § 6.

so recently selected for her chief magistrate, would be more deeply to be deplored, were it not for the consolation, that he is summoned by his country to the discharge of other duties in a larger sphere of action, where his talents will still shed lustre upon his native state, and be employed in protecting those great interests, which she has in common with the other members of the Union. My inexperience enables me to promise no more, than a diligent application of my abilities, such as they are, to the duties of the station, and my honest and earnest endeavors to co-operate with the legislative department in measures to promote the happiness of the people, and to advance the interests and glory of the state.

Here, perhaps, after a due acknowledgment of my gratitude to you, for your kindness to me on all occasions, it might be my duty to stop. But I hope that the peculiarity of my situation, may propitiate your attention and indulgence to a few additional remarks, which, though they may want precedent, seem to me to be required by the occasion.

The administration is cast upon me by a contingency, provided for by the constitution, but which could not have been anticipated by my constituents, when I was elected. The time, too, is deserving of notice being near the commencement of the constitutional term, during the sitting of the legislature, and pending the full exercise of the executive functions, in all its various and complicated relations. Should I, without explanation, enter upon the discharge of those duties, my official conduct might be subject to misconstruction by the evil disposed, and to misrepresentation from the interested and disingenuous. I have therefore thought this to be the proper, as it is the only occasion, to give a brief outline of my views, concerning the leading interests of the state, and the course of policy which I feel bound to pursue in relation to them.

It must be considered, that the Governor elect enters upon the discharge of his duties by a message to the legis-

lature, enjoined by the constitution, which answers the double purpose of directing their attention to subjects of legislation, and making known to the people his system of policy. The advantage of this is mutual; it enables him to explain, in advance, what might otherwise be deemed inexplicable acts, and the people to decide upon the soundness of his doctrines, and test his consistency and motives, by comparing his acts with his avowed principles. I am willing to subject my official conduct to this inquisition; for, however I may err in judgment, I feel an assurance that my motive will always have the approval of my own conscience. I therefore hope, that you will not consider the matter of this address improper or obtrusive.

A conventional polity, securing to the members of the community as much liberty as is compatible with the necessary restraints of civil society, is the strongest preliminary evidence, which a people can give, of the existence of that knowledge among them, which fits them for self-government. This knowledge may be of the highest order, and confined to a small portion of the people, but sufficient for devising and adopting a system of government, founded on the best principles of republican freedom. Yet such a system must necessarily be sustained by that public virtue, which receives its vitality and direction from the intelligence of the whole people. These truths are evinced by the hitherto successful experiment of our own admirable and unparalleled republic, and the failure of similar attempts in modern as well as ancient times.

Although an order of men, deeply imbued with all the varied and profound learning of the age, is important to the community in many respects, yet their light may be lost in the darkness of ignorance which surrounds them. The real support of good order in a free commonwealth, is knowledge, diffused to every individual, that he may walk in the path of his duty by the light of his own mind, as well as by that reflected from higher sources. We have every

good thing to expect from our fellow citizens; and the first and greatest of our paternal care should be their intellectual and moral culture. Education, therefore, especially in the elementary branches, should receive every protection and encouragement which the wisdom of the legislature and the resources of the state can bestow.

The next care of a good government, should be directed to the increase of public wealth. Agriculture, commerce and manufactures, are co-operatives in promoting this object. The effects of individual enterprise in these several pursuits, may be aided to an almost illimitable extent by an enlightened and well directed legislation. By this means the pursuits of industry may be diversified; a circulating medium equal to its wants may be supplied; and its products may be enabled to reach those markets where they may be wanted for commerce and consumption.

It is but little more than a century since banks, issuing paper as a representative of money, were established under the restrictions and sanctions of law; and their influence upon productive industry, in reducing the interest of money, creating credit, and affording an abundant and ready medium of exchange for the products of labor, and the wants of commerce, have been more beneficial than the most sanguine projector could have anticipated. It cannot be doubted that this state has a deep interest in the establishment, under wholesome regulations, of a sufficient number of banks, to answer all the demands of the industry, enterprise and commercial spirit of our people. [See note 3.]

Internal improvements, by means of roads and canals, is another important agent, in the production of national wealth; and cannot be overlooked by those entrusted with the administration of the government, without incurring the reproach of a disregard of the best interests of the state. Through the instrumentality of these improvements, internal commerce is extended, manufactories are multi-

plied and distributed, agriculture is better rewarded for its labor, interior towns are founded and enlarged, and by the increased activity, wealth and population of the interior, our commercial cities are made to flourish with a correspondent increase of business, wealth and population. No one who will take the pains to acquaint himself with the geography, topography and statistics of our state, its present wealth and prospective revenue, can doubt but that it will, even before the present generation passes away, by a prudent, but not precipitate use of its revenue and credit, be intersected in every direction by canals and railways. The time of commencing these enterprises, the mode of carrying them on, and the local claims for priority, will always be matters of strife, doubt and controversy, among those who are well wishers to these projects.

There is, perhaps, no part of the discretionary duties of those charged with the administration, which requires more sound judgment, inflexibility of purpose, forbearance and honesty, than those which relate to the management of the finances of the state. To collect monies for public uses, to husband them for useful ends, to disburse them with economy without parsimony, (often the most fatal extravagance,) to employ suitable agents for all places of public trust, and properly reward faithful and useful services, are matters of justice and sound policy, requiring the utmost delicacy of judgment and unbending integrity.

I have thus sketched what I esteem the great features in the public policy of the state.

There are other matters of high importance to the peace of society, and the protection of our citizens in their persons, property and comfort, which my present purpose does not require me to notice with particularity. The executive duties in regard to the recommendation of those, as well as all the other interests of the state, as subjects of legislation, have already been discharged, at this session, with an ability and discrimination, which would not only render

any attempt of mine useless, but subject it to the reproach of arrogance.

I trust that you will not think it amiss, that I should be explicit with you in regard to another matter, to which direct reference is not usually made on occasions like the present. I allude to those political divisions which exist now, and have heretofore existed among us. Desiring to be fully understood by my fellow-citizens upon all points, and willing to abide by their decisions, I can see no reason why I should avoid an explanation of my sentiments upon a subject, which, every one knows, has a controlling influence over the conduct and deliberations of all our public functionaries.

However public opinion may be divided on the question, whether political parties are or are not desirable or beneficial in a government like ours, all sensible men must be convinced, and the experience of the world has shown, that they will prevail where there is the least degree of liberty of action on the part of public agents, or their constituents; and that they are more especially inseparable from a free government. The history of this republic demonstrates the truth of this position, and it is not desirable, in my opinion, that it should be otherwise.

Those party divisions which are based upon conflicting opinions in regard to the constitution of the government, or the measures of the administration of it, interest every citizen, and tend, inevitably, in the spirit of emulation and proselytism, to reduce many shades of opinion into two opposing parties. By the mutual concession of opinion, within the ranks of a party, acerbity of spirit is softened. Thus, organized parties watch and scan each other's doings, the public mind is instructed by ample discussions of public measures, and acts of violence are restrained by the convictions of the people, that the prevailing measures are the results of enlightened reason.

Diversity of opinion results from the infirmity of human

judgment; and party spirit is but the passion with which opposing opinions are urged in the strife for the possession of power. As yet, our free institutions have not suffered from an indulgence in feelings of this character. We have, it is true, witnessed, in times past, a degree of party spirit, so highly excited as to alarm the fears of patriotic men for the integrity of the Union: but, at those periods, the compactness and harmony of our admirable system of government were not thoroughly understood, nor had the attachment of the people to it been fairly tested. Experience has proved, that its foundations are laid so deep in the affections of our citizens, and that its complicated machinery is so nicely adjusted, and so well adapted to its design, that it has an energy sufficient for its own preservation. The universal consciousness of these truths has tamed the spirit of party, and stationed it, as the vigilant watchman, over the conduct of those in power. No stronger proof of this position can be desired, than is furnished by the incidents of the election, through which we have just now passed. The excesses which characterized that struggle, were rebuked by the calm, orderly and dispassionate manner which marked the conduct of the people at the polls, in the discharge of their sacred functions as electors — a rebuke which, I have no doubt, will, at future elections, chasten the conduct of meretricious partizans, and bring down the temper of the paper contest to the manners of the times, and the sense of propriety manifested by the people themselves.

Of the political parties known to our history, there has been one, and but one, which, from the adoption of the federal constitution to the present day, has maintained an unvaried character, and has constantly had the public good for its object. Drawing its principles from the whiggism of the revolution, and looking steadfastly to the maintenance of the federal constitution, and the enlargement of the privileges of the people as its results, it triumphed in

1798, supported the government through the perils of the late war, and has recently again triumphed in this state, and throughout the nation. This party has, at times, lost its power by disunion, and by those, often healthful, fluctuations of the will of the people, incident to popular government, and has as often regained it, when an opportunity for reflection and fuller information was afforded. But, through all its fortunes, it has evinced a vital energy, sufficient, in due time, to vindicate its claims to supremacy, and a magnanimity to correct its own errors. It has employed its corrective power upon the measures of government and heterodox political opinions, until it has received the assent of nearly all parties to the purity and fitness of its principles, and the justness of its rule. It stands now upon its original foundation; and for whatever of true political principle or public prosperity we enjoy, we are indebted to its uniformity of character and its undaunted perseverance. I have lived in a reverence of its principles, and am not too fastidious to avow my determination to labor for its continued ascendancy, by the plenary exercise of all the proper means that may be placed at my disposal; with it, I am content to stand or fall.

I have said, and now repeat, that as yet, our invaluable institutions have suffered but little, if any thing, from the spirit of party, fiery and excited as at times it has been. Political parties, at the present day, sobered by past experience, leave scope for the exercise of all the charities and courtesies of life, between opposing members. Their spirit does not enter into families to engender hate, nor into social and religious societies to create dissensions, and to produce bitter and destructive enmities. These are the offices of personal parties, whose spirit is overwrought passion, whose object of pursuit is vengeance, and whose ultimate end is civil disorders and cruel persecution. It is one of the peculiar benefits of a well regulated party spirit in a commonwealth, that it employs the passions actively in a milder mood, and thus shuts the door against faction.

Parties of this description, oftentimes arise from the best of feelings, and for the most honest purposes: to redress the wrongs of an individual, to inflict punishment on public transgressors, to suppress what may be deemed dangerous classes in the community, or to enforce opinions, which its votaries may suppose essential to the comfort or to the temporal and spiritual peace of others. In the full pursuit of their objects, when in the minority, they too often disregard law—when in the majority, they proceed through violent laws, and in disregard of the dictates of humanity and justice, to the end proposed; and they seldom cease when they obtain the mastery, until the heart is wrung by the spectacle of widespread ruin, which has marked their desolating career.

It is not thus, that human passions act by their own impulse. Although they are easily roused by individual suffering, or are strenuous in the effort to proselyte to individual dogmas, they are prone, without extraneous excitement, to return to their duty under the empire of reason. But, while heated, they are exposed to the subtle excitations of selfish, heartless and unprincipled men. Honest men and honest causes are thus made to minister to the unhallowed enterprises of the dissolute intriguer, the discarded partisan, the prurient malcontent, and the unsuccessful politician.

It was through the frenzy of feeling from kindred causes, that non-conforming Quakers were hung in our own country, by unjustifiable laws; the most worthy of Protestants and Catholics were burnt at the stake in Europe, by the instigation of hypocrites, who feigned a zeal for the God of mercy; and Europe, in the middle ages, was drained of its people and treasures by the arts and ambition of popes and priests, and princes and nobles, to force, by the sword, the tenets of Christianity upon the deluded Mahometans. And finally, should a spirit of religious or civil persecution be kindled in this country against the Methodists, the Baptists,

the Presbyterians, or any other sect; or against the lawyers, the doctors, or any other profession, or class of citizens; there would not be wanting men of capacious minds, but desperate characters, to fan the flame, and endeavor to lead their honest and fanatic fellows, in the wild tumult of passion, to sacrifice their victims to the Moloch faction.

I still flatter myself that we are not destined, in this happy country to such excesses. Knowledge abounds, to moderate the passions; just laws, enacted by the people themselves, and faithfully administered, afford protection against outrage; and opinion, exercising its moral power over the conduct of partizans, applies correctives, through regular party discipline, to such abuses in individual conduct as cannot be reached by the ordinary operation of the laws.

But I should be wanting in candor, if, in this informal, but unreserved, expression of my feelings, I omitted to say to you, that my hopes on this subject are not without alloy. A strong excitement in the public mind, justly caused by a recent outrage in the violent abduction of a free citizen, is assuming, and indeed has in a great degree assumed, a character, which, if not seasonably checked, may introduce among us moral evils as disastrous as those which it proposed to correct. [See note 7.]

I shall be at once understood as alluding to what is called the anti-masonic excitement. In that excitement I have myself participated. In every past situation, in which it has become my duty to act in reference to it, I have endeavored by all lawful means, to mark my abhorrence of the violence by which it was produced. In my present station I will make it my business, as it will be my duty, to exercise all the power conferred upon me to bring the guilty authors of that outrage to condign punishment.

I am no mason, nor have I ever had the least desire to connect myself with that, or any other secret society; and I may go farther and say, that no society or association of

men, whose transactions are veiled from the public eye, can meet my approbation. Yet I find it difficult to believe, that a society, which has existed for several centuries past, under the most jealous governments, which has enrolled among its members persons of all ranks and conditions, and many distinguished for their piety, purity of lives and devotion to their country, is founded on principles which tend to subvert all government, or exact obligations from its members incompatible with their duty to their fellow citizens, their country and their God.

I have not found that the members of the masonic fraternity, anywhere, contend, that there is in the present condition of the world, whatever may have heretofore been the case, any great object to be effected, or particular good to be obtained, by upholding the institution. If that be so, I cannot but believe, that all well meaning members will soon see the propriety of dissolving an association, which can only remain as a source of useless irritation among its members, and between them and the rest of the fellow-citizens.

But in making these avowals, I owe it to my own feelings, and to the occasion, to say, that any attempt to make this subject subservient to political or party purposes, which labors to introduce into this community a proscriptive crusade against any class of our citizens, and which threatens to expose this highly favored land to those scenes of fanaticism and bloody persecution, which have in succession overturned and devastated the fairest portions of the globe, shall meet in me a mild and temperate, but a steady and inflexible opponent.

It remains for me, only to say a parting word to you, gentlemen, who have been my fellow laborers and companions for the last two months, and with whom I have been in the daily habit of agreeable intercourse within these walls. The kindness, respect and indulgence to my errors, as your presiding officer, which you have uniformly shown

towards me, together with the efficient aids which I have received from your excellent clerk, deputy clerk, sergeant and doorkeeper, have made my duties here pleasant and easy, and inspired me with a lasting regard for your persons. I cannot forbear to add, that the talents, patient industry and honest zeal, which you have employed in the discharge of your perplexing and onerous duties, and your good humour and forbearance towards each other, in urging conflicting views in your strife to be useful, evince an elevation of feeling and liberality of sentiment, which have commanded and received my highest respect. While our state continues to employ in her councils such men, her march onward to the high destinies which await her, will be sure, brilliant and rapid."

March 18. To the Assembly: Transmitting a report and resolutions adopted by the Legislature of Virginia relative to the action taken by South Carolina and Georgia on the recent tariff laws. The resolutions are as follows:

"*Resolved,* That the constitution of the United States, being a federative compact between sovereign states, in construing which no common arbiter is known, each state has the right to construe the compact for itself.

Resolved, That in giving such construction, in the opinion of this committee, each state should be guided, as Virginia has ever been, by a sense of forbearance and respect for the opinion of the other states, and by community of attachment to the Union, so far as the same may be consistent with self-preservation, and a determined purpose to preserve the purity of our republican institutions.

Resolved, That this general assembly of Virginia, actuated by the desire of guarding the constitution from all violation, anxious to preserve and perpetuate the Union, and to execute with fidelity the trust reposed in it by the people, as one of the high contracting parties, feels itself bound to declare, and it hereby most solemnly declares, its deliberate conviction, that the acts of congress, usually denominated the tariff laws, passed avowedly for the protection of domestic manufactures, are not authorized by the

plain construction, true intent and meaning of the constitution.

Resolved, also, That the said acts are partial in their operation, impolitic, and oppressive to a large portion of the people of the Union, and ought to be repealed."

For the South Carolina resolutions, see 1828, special message of February 2, *ante,* p. 218.

For the synopsis of the action taken by Georgia, see 1828, special message of February 19, *ante,* p. 221.

April 3. To the Assembly: Transmitting a resolution adopted by the Legislature of Louisiana, approved by the Governor February 4, 1829, proposing that the federal constitution be amended by providing that the term of the president and vice-president should be six years, and that the president should be ineligible to re-election.

April 30. To the Assembly:

"I return you the bill 'to incorporate the New York sacred music society,' for the purpose of correcting an apparent error in the seventh section. The reference in that section to the revised laws omits the chapter."

The correction was made, and the bill became chapter 345.

May 5. The Legislature adjourned without day.

ENOS T. THROOP, Lieutenant-Governor and Acting Governor.

ANNUAL MESSAGE.

GENTLEMEN OF THE SENATE, AND OF THE ASSEMBLY.—In compliance with the constitution, I proceed to lay before you the condition of the state, and to suggest for your consideration such matters as I deem conducive to its welfare.

In looking back upon the past year, we see abundant reason to be thankful to Almighty God, for having spared us from the ravages of disease, for having prospered the industry of the country, and for having made us conscious of our national advantages, and content with our condition.

Although in some sections of the State an unusual excitement has prevailed, I am happy to have it in my power to say, that it has not originated in a desire to change our constitution, or in a distrust of the integrity of our laws; but in an honest zeal, overflowing its proper boundaries, misdirected in its efforts, and carrying into public affairs matters properly belonging to social discipline. Such feelings cannot long exist beyond the limits of their proper sphere of action; and it is a source of gratification, that in this instance they give evidence of speedily subsiding into their natural and healthful channel.

One of the most important incidents to a government resting upon the public will, and peculiar to it, is the constant observation of the public eye, and its rigid scrutiny into the conduct of public functionaries; tending to keep them within the limits of their authority and in the active performance of the duties pertaining to their important trusts. No officer is so high or so humble, as not to be awed

by its presence, or to be made conscious of its power. This searching operation is prompt to detect abuses, to discover impure motives, and to expose offenders to the corrective tribunal. Our fellow citizens are sufficiently enlightened to know all the advantages they enjoy under the government of their choice; they have manifested an increasing attachment to it, and have been conspicuously auxiliary in supporting the laws and constituted authorities, and in promoting measures for improving the condition of the state.

From the period of the adoption of the constitution of the United States, we have progressed in testing the federal system, with cautious steps, under the guidance of instructed public sentiment; and although doctrines have, from time to time, been honestly advanced, and incipient measures taken, at variance with constitutional restrictions, and deemed adverse to the true interests of the people, they have found a prompt corrective in the public voice. During the present administration, the sound sense, enlightened views, and ardent patriotism of the Executive, leave no room to doubt, that the known landmarks of the constitution will be respected, that the sovereignty of the states will not be violated, and that measures, warranted by plain constructions only, will be pursued in direct reference to the public good.

We are, happily, at peace with all the world; and relying upon the spirit of justice which has always dictated our dealings with other nations, and continues to influence our national councils, we have great reason to hope that all causes of complaint against foreign powers will be amicably removed, and that we shall not soon be called upon to rally around our national head to enforce our just claims, or resist unjust aggressions. In a state of peace, the financial resources of the general government greatly exceed the amount required for its ordinary expenses; and under a system of strict economy, and with a due regard to so desirable an event, our national debt, which was incurred

during the revolutionary and late wars, will, in the course of five or six years at most, be extinguished. Our government will then present a new claim to the affections of its citizens, and to the admiration of the world, founded upon the novel spectacle of a great nation paying off a great national debt.

In the course of my administration, I have been repeatedly called upon to exercise the constitutional power of pardoning convicts.[a] The painful duties connected with that trust, I have endeavored to perform with a due regard to the objects of punishment; and I have, in many instances, been compelled to resist the most earnest and affecting appeals to my sympathy, supported often by petitions signed by the most intelligent citizens, and those whose official stations have given them the best opportunities of knowing the unworthiness of the suppliants. During the past year, there have been four convictions for murder, in each of which executions have taken place; but I have pardoned from the state prison, twenty-eight convicts. Nearly all those pardons were granted in cases, where, first, great doubts of guilt were certified to me by the courts before whom the convictions took place, and those doubts appeared to me to be well founded, on examining a full statement of the cases; secondly, on personal examination, and inquiry of the keepers of the prison and the presiding judges, as to certain convicts for whom petitions had not been presented, I deemed them fit objects of mercy; and thirdly, from want of sufficient latitude of discretion in the courts, sentences too severe were necessarily imposed.

The punishment of criminals is one of the most interesting subjects which can engage the attention of the Legislature; and although our criminal code has been recently very ably revised, and its features much softened, yet I consider it my duty to bring it again to your notice. We have been gradually relaxing the severity of punishments,

[a] Const. 1821, art. 3, § 5.

until our laws relating to them have a decided character of mildness; still it behoves us to consider, whether the great objects of punishment will not be better attained by farther mitigations.

We derive our classification of crimes from the English laws; and many of their distinctions have arisen from the state of society, and the structure and peculiar policy of that government. It is a serious question, whether the moral turpitude of crimes, or the policy of the government, requires that the existing artificial gradations should continue to influence, to their present extent, the punishments prescribed for them.

Our revised code imposed the punishment of death for arson of the first degree; and empowers the court to imprison for life, for certain kinds of rape, mayhem, attempt to poison, arson, burglary, forgery, robbery and murder. I submit to your consideration, whether the punishment by death ought to be extended beyond the crimes of treason and murder; and whether it is politic to imprison for life in any case, except on second conviction. I am persuaded, from observation, that a period of ten years' imprisonment in our best regulated state prisons, is, in most cases, sufficient to subdue the moral, mental or physical faculties of the most obdurate man. An imprisonment for life is rarely, if ever, where the convict's life is not near its natural close, or unexpectedly terminated, carried into effect. The public sympathy becomes awakened in behalf of the most atrocious life convict; and if he is imprisoned on a first conviction, pious and humane hopes are entertained that he is a renewed man, and that the discipline of the prison has purified his heart, and corrected his evil propensities. These considerations are urged with zeal for his pardon, after a brief imprisonment, and have been so far successful, that I can assert from an inspection of the prison books, that there are now in the prison at Auburn comparatively few of

that class of convicts, who have served a longer period than five years.

One of the great objects of punishment, is the reformation of the offender. It has been the hope of the philanthropist, and I indulge the belief that it has now become, to a certain extent, the feasible object of the legislator. An amount of punishment which will receive the sanction of public feeling, executed to its full extent, will have a more salutary effect in restraining crime, than greater severity, which enlists public sympathy into the service of those combined outlaws, who make it a part of their operations to procure pardons for their associates in crime. We can indulge but a faint hope of reformation in one, who has suffered a term of punishment in a state prison, without correction of his evil propensities; and the public owes it to the safety of the citizens, to shut out from the world, in most cases for life, those who are returned to prison on second convictions.

As intimately connected with this subject, I earnestly solicit your attention to the condition of our county gaols, and the punishments for petty offences. The greatest defect in our former mode of treating state convicts, was the necessity of imprisoning them, of all ages and grades of crime, in the same room, whereby they mutually contaminated each other; and those who entered fresh in crime, came out adepts in all the arts of mischief. Success has crowned our efforts to correct this evil in our state prisons, by means of separate dormitories, and associated silent labor; but our work will be incomplete until our county gaols cease to be the primary schools of vice. As they are now constructed, the novice, the youthful transgressor, and the merely suspected, are crowded into rooms with the petty convict, the old marauder, the confederate, and the graduate of many prisons. Secluded from observation, and compelled to be idle, they indulge in wicked discourse, and such social vices as are within their means of enjoyment.

Here, the arts of accomplishing deeds of villainy are communicated, and illustrated by tales of adventures, and all the captivating minutiæ of heroic and eventful lives, until the novice becomes initiated in the mysteries of crime, and waits impatiently for an opportunity to commence a career of wickedness. I submit to your consideration the propriety of enlarging the provisions of the Revised Laws, so as to prepare the way for executing a plan of separating offenders, confined in county prisons on sentences, from those who are committed on suspicion; providing separate dormitories for all; and for the regular daily employment of convicts at some useful trades. By these means, the county expenses of prisons, as well as the amount of crime, would be very much diminished.

The expense to counties, under our present system of supporting convicts in county gaols, is very considerable; and those who have had experience in the proceedings of criminal courts, know that very inadequate punishments are frequently inflicted for misdemeanors, in consideration of the burdens which a protracted imprisonment imposes.

The convictions for petit larceny, second offence, are very numerous, and constitute a large proportion of the inmates of our state prisons. There are now in the state prison at Auburn eighty-one of that class of convicts (a great proportion of them boys, from twelve to twenty years of age, and blacks, male and female) out of six hundred and twenty-seven — the whole number confined there; and fifty-seven out of five hundred and eighty-four, the whole number of convicts now in the state prison at Sing Sing. Persons are convicted, a second time, for trifling larcenies, and often sent to the state prison, it is believed, to relieve a neighborhood of a pauper, or of an idle or troublesome person. Should they be included within county arrangements, it might save the state much expense hereafter, in the multiplying or enlarging our magnificent and costly edifices for state convicts.

The evils of county gaols, to which I have alluded, are more apparent in our large cities, where great numbers of all conditions are huddled together in an atmosphere most pestilential in its physical and moral effects. The experiment for remedying these evils, might be made there, and the propriety of extending the principle to other counties, or several associated counties, determined. So far as relates to the punishment of petty convicts, the city of New York has already erected a building upon this plan.

I advert with great satisfaction to the high state of improvement, and prosperous condition, of our state prisons. That at Sing Sing is not yet finished, but the prison at Auburn has been in operation a sufficient time to enable us to judge of the influence of our system of prison discipline in reforming offenders, and its bearing upon the finances of the state. The reputation which this system has already acquired, not only with our sister states, but in Europe, is a matter of just state pride; and should stimulate us to further endeavors to aid the cause of humanity at large, by the influence of our example. The radical vice of old prisons is corrected in the plan of our buildings, which are constructed with a separate dormitory for every convict. Workshops are built in long lines. The convicts are employed, during the day, at all the various mechanic arts; and each man may be put to that business which suits his capacity, his health, and former habits of life. They are kept in small companies, constantly under the eye of a keeper, who has charge over them from the time they leave their cells in the morning, until they are returned to them in the evening. A secret avenue surrounds the workshops at Auburn, where, by the means of small glass openings, each convict, as well as the keeper over him, may be seen at any time. Through this avenue, strangers are constantly introduced to see the convicts, and the superior keepers patrol them at pleasure, without the convicts or subordinate keepers being conscious of their presence. The convicts are

provided with all the necessaries of life, subjected to reasonable hours of labor, not suffered to speak during the day, and returned at night to solitude and darkness, to reflect upon their past misspent life, and form resolutions for future amendment.

To aid these operations of the mind, the ignorant are instructed by means of suitable schools, and a minister of the gospel, supported by the state, employs portions of his time in visiting and conversing with the convicts, at their cells, and performing divine service with them collectively, at stated times. They enjoy, by regular and suitable alternations of labor and rest, all the comforts which are compatible with their condition. They exhibit a remarkable appearance of health, and work with industry and apparent cheerfulness. These are the powerful means which are brought to bear upon their reformation, and produce a submission and penitential state of feeling.

From the old, and long practised culprit, it is vain to expect reform, by human means; but the inquiries which have been judiciously and extensively made, to ascertain the effects of our prison discipline upon those who have been subjected to it, have resulted in establishing the fact, that nearly all who were young, and convicted for first offences, or whose crimes have proceeded from ignorance, intemperance and idleness, have become useful members of society.

The experience of the prison at Auburn, also shows, what has been reasonably doubted heretofore, that the labor of the convicts may be made to supply the expenses of the establishment. During the last three or four years, the earnings of the convicts have produced a surplus, after paying for the supplies and government of the prison; and it is fair to infer, that hereafter the funds of the state will be relieved from that, hitherto, most oppressive burden.

It, however, must not be forgotten, that very much of

the success of these establishments depends upon the ability of the persons placed at their head. Thus far the state has been exceedingly fortunate in being able to command the services of gentlemen of the highest respectability and talents.

To preserve what is good, to correct what is evil, to amend where errors have been committed, to know that the officers of the prison are faithful, and that the commissioners and inspectors are attentive and discreet in all things entrusted to them, and to make the two institutions conform to each other, and to place both on the best foundations, I conceive there is a manifest propriety in the legislature appointing, from time to time, a committee from their body to visit both prisons. I recommend it at this time with the more confidence, because it is not a new measure, two such committees having been heretofore appointed, and because the Sing Sing prison will soon be finished and placed under a new discipline.

Among the preventives, as well as correctives, of crimes, may be placed many of those charitable institutions which owe their origin to the enterprise and liberality of benevolent individuals, with timely contributions on the part of the state. In these efforts, the city of New York, containing within itself, as well abundant objects of charity, as a great proportion of the population, intelligence, benevolence and wealth of the state, is proudly conspicuous. The infant schools, orphan asylum and house of refuge, are among the most useful of these institutions.

The infant schools are of recent introduction, and although the means of the society are not adequate to the wants of that portion of the destitute who are the objects of their care, yet sufficient has been done to prove its exceeding usefulness. This noble charity is looked upon with great interest by those who feel for suffering humanity, and who have enlightened notions of the effects of early impressions upon the human mind. They receive into these

schools the children of the poorest class of the city population, who would probably be overlooked in the great mass of human beings, and be suffered to grow up in ignorance and vice, but for that active charity which seeks to do good. Children are received at the early age of eighteen months, and taken care of during the day, while such of their mothers as are well disposed, pursue their daily labors. None but those who have witnessed the discipline of these schools and its effects, can have an adequate idea of the amount of useful knowledge which can be conveyed, by an ingenious and novel mode of instruction, into the minds of these small children. It is to be hoped that the attention of humane individuals will be more effectively directed to this subject, and that by their contributions, and suitable aid from the legislature, the amiable ladies who have these institutions in charge, may be enabled to extend their care to all who are in a condition to need it.

Benevolent institutions of this kind, properly belong to our great towns. In the country and smaller towns, individual distress becomes known, and is relieved, by individual exertions; and there are not usually a sufficient number of persons at leisure, to conduct schools of this description.

Of the same character, and equally creditable to the ladies who patronize and direct it, and equally deserving of public encouragement, is the Orphan Asylum in the city of New York. Children who are destitute of parents, friends and home, are sought out and placed there, where their natural wants are provided for, and they are instructed in the elements of learning and the principles of good behavior, until they are of sufficient age to be bound out to proper service.

The House of Refuge was established by an association for the reception of juvenile vagrants and delinquents, and receives minor convicts from every part of the state. They are there kept under a strict and wholesome discipline, and

are instructed in trades, and in the rudiments of education, until they are sufficiently reformed to be bound out or discharged.[1]

These institutions, together with the several kindred establishments in other cities and large towns, many of which are entitled to equal commendation, and the numerous charity and Sunday schools throughout the state, are exerting a great power in the prevention of pauperism and crime. In this country, where labor is well rewarded, and the means of comfortable, nay luxurious subsistence, are within the reach of every one not disabled by disease or old age, it is manifest that the greater part of pauperism and crime results from idleness and intemperance, and that want of instruction and bad example are the primary causes of these vices. The institutions which I have noticed, strike at the root of the evil. Most of them have been liberally patronized by the state, and some of them have received all the aid which their exigencies demand.

Among the numerous other charitable institutions which adorn the city of New York, those for the education of the deaf and dumb,[2] and for the care and restoration of insane persons, stand conspicuous. They have been cherished by the legislature, and will not cease to be interesting objects of its regard. But it is deserving of consideration, whether the poor of the latter class are sufficiently provided for by our laws.

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1 Chapter 181, passed April 16, authorized the Governor to direct the agent of each state prison to transfer to the House of Refuge in the city of New York all convicts under the age of seventeen years.

2 By chapter 170, passed April 15, the New York Institution for the Instruction of the Deaf and Dumb was authorized to receive from each Senate district three additional indigent pupils, to be designated as state pupils, to be retained for five years subject to the supervision of the superintendent of common schools. The institution was also entitled to share in the literature fund in the same manner as academies in the first district. The act also authorized the Central Asylum for the Instruction of the Deaf and Dumb to receive one additional indigent pupil from each Senate district, on the terms and conditions prescribed by the act of 1825 relative to the indigent deaf and dumb.

By the census of 1825, it was ascertained that there were at that time, eight hundred and nineteen insane persons in this state. Of these, two hundred and sixty-three were of sufficient ability, to pay for their own support; two hundred and eight were in gaol or supported by charity; leaving three hundred and forty-eight insane paupers at large, a terror to others, and suffering, in addition to mental derangement, all the privations attending penury and want. The condition of those under poor-house regulations, or confined in gaols, is, if possible, worse. No person of sensibility can look upon those sufferers, in their small cells, surrounded by a bad atmosphere, sometimes chained to the walls, and witness their dejected or wild despairing looks, or frantic madness, without a feeling of horror. No restoration can be hoped for under such circumstances; indeed the instances are not rare, of persons slightly deranged, becoming incurable maniacs by these injudicious means. The contrast of their condition, with those in the Lunatic Asylum in New York, is very striking. In the latter place, everything is spacious, cleanly and pleasant to the eye — the inmates are suffered to be at liberty, and range in the open air, in an enclosed yard — they are treated with kindness, and their innocent whims indulged. The consequence is, that many who are placed there, are restored to reason, and discharged after a short period, to enjoy the society of their friends. It speaks much in favor of the ability of the keepers, attendants and superintendents of that interesting institution, that during my visit there last summer, but one out of sixty or seventy, then under their care, was in close confinement.

But that institution is not designed for general charity. It receives those only who are able to pay for their support, and such paupers as are sent by the authorities of the several towns, and paid for out of the poor fund, at a certain price, stipulated by law. I submit to your consideration, the propriety of establishing an asylum for the gratuitous care and recovery of that most destitute class of the human

family, who are suffering from a darkened understanding and the evils of poverty at the same time. While roaming at large, they are dangerous to the personal safety of the citizens, and many crimes of the deepest die, have been excused, on the plea of mental alienation. The ties of natural affection frequently impel relatives who are struggling with poverty themselves, to afford that relief which is a public rather than a private duty.

Our poor laws, originally founded upon the English system, were pregnant with all its evils. Conflicts between towns, relative to the settlement of the poor, were accompanied by expensive litigations; paupers were suffered to idle at private lodgings; and those whose decrepitude demanded care and kindness, frequently suffered from neglect and cruelty, without the means of redress.

A few years since, an entire revision of the system took place. Counties were authorized by law to purchase farms, and erect houses upon them, for the reception and employment, so far as they were able to work, of all the poor of the county. The distinction between county and town poor, and all the regulations for the transportation and settlement of the poor, were abolished. Many counties have made the experiment, and I am persuaded, that the tendency of the new regulations has been to keep idlers away from situations where they are exposed to a rigid superintendence, and compelled to work; to provide better for the sick and disabled; and to lessen very much the expense of supporting the poor. The reports, which the revised laws require the county superintendents to make to the secretary of state, I hope will present such a favorable view of the new system, as to induce the legislature at no distant day, to render the adoption of it imperative upon all the counties.

A sense of the importance of common education, has been strongly manifested by the legislature, in setting apart an ample fund for that purpose. An enlightened people will

not live under a government where their rights are unnecessarily abridged; and a free government cannot be maintained by an ignorant population. The enlightened mind, while it discerns the truth, looks with indulgence upon the errors of opinion, religious, political or social, which others may entertain; and in our government, where every measure depends upon the public voice, our reliance must be placed upon the general intelligence of the people, for exemption from those civil disorders which have put a short period to the duration of free governments, in whatever other nation or time they may have existed. But I need not press this subject.

The capital of the common school fund consists of one million six hundred and sixty-one thousand and thirty-one dollars, in stocks and other securities; and eight hundred and thirty-nine thousand acres of land. The productive fund is augmented annually, by the sale of those lands, and sufficiently to meet the increasing demands upon it. I regret to say, that the principal of the fund has sustained a diminution, during the past year, of fifty thousand dollars, by the failure of the Middle District Bank. The revenue for distribution the ensuing year, is estimated at one hundred and nine thousand nine hundred and eighty-one dollars.

The common school system is yet in its infancy; and as the attention of the legislature will be constantly directed to it, as one of the primary interests of the state, the defects which experience points out will in time be remedied by their wisdom. The returns for the past year show, that school districts have been organized in almost every neighborhood in the state, amounting in the whole to eight thousand eight hundred and forty-seven; and that eight thousand two hundred and seventy have made returns according to law. Two hundred and thirty-eight new districts have been formed; and the districts which have made returns, exceed by one hundred and six those of the previous

year. The aggregate number of children over five and under sixteen years of age, in the districts which have made returns, is four hundred and sixty-eight thousand two hundred and fifty-seven; and four hundred and eighty thousand three hundred and twenty-five children have been taught an average time of eight months during the year. The increase of children between the ages of five and sixteen, in the same districts, is nineteen thousand one hundred and forty-four; and the increase in the number instructed, is twelve thousand one hundred and twenty.

The public money paid to the school districts during the past year, is two hundred and fourteen thousand eight hundred and forty dollars. Of this sum, one hundred thousand dollars was paid from the revenue of the school fund; and the residue was derived from a tax upon the towns, and particular funds possessed by some of them. In addition to this amount, there has been paid in the several districts, two hundred and ninety-seven thousand and forty-eight dollars; making a total of five hundred and eleven thousand eight hundred and eighty-eight dollars paid for teachers' wages alone, in the common schools of the state.

The want of competent teachers is a difficulty which has always been experienced, and still exists. To devise a remedy, is well worthy of further efforts. The course of education might be advantageously varied under competent teachers, by introducing among the early studies of children, those elements of the natural sciences, which are easily comprehended by means of sensible illustrations, and which impart a knowledge of things useful in agricultural and mechanical pursuits.

Our state has not been unmindful of its institutions for instruction in the higher departments of literature. The revenue from a literature fund is annually distributed to our academies; and of our four colleges, three have been amply endowed. Those in New York and Schenectady continue in a flourishing condition; and that at Clinton, in Oneida county, exhibits symptoms of reviving energies.

The college at Geneva, which has received no other favor from the state than its charter, has been laboring under peculiar difficulties for the last two or three years; but hopes are entertained that it will recover, and it has at this time an increased number of students. The classical learning taught in these seminaries is a useful preparation for the learned professions, polishes and refines society, and sheds a luster upon the country. As its attainment is generally sought by the more wealthy, it does not need that fostering care of the government, which is indispensable to the dissemination of common learning, yet no wise government will be inattentive to its wants. I notice with peculiar pleasure the various private schools for instruction in the higher branches, established by individual enterprise, in several parts of the state. They ask no aid from the government; are generously patronized by the public; and are, for the most part, conducted by gentlemen of high characters and great literary attainments. Their multiplication and success afford evidence that the profession of teaching is taking that elevated rank in society, to which it is entitled by the importance of its duties.

Our medical colleges, established by the authority of the state, at Fairfield and New York, continue under the care of learned and talented professors, and are rising in the public estimation. At Fairfield there are now one hundred and sixty students attending lectures; one hundred and thirty-eight of that number are from various parts of this state, eight from the New England states, nine from Canada, three from Pennsylvania, one from North Carolina, and one from New Jersey.

The whole number at New York is one hundred and seventeen. Under judicious regulations, and the protection of the state, there is reason to believe that the usefulness of these colleges will increase, and that they will speedily rival the most flourishing institutions in the country.

The great interests of agriculture and manufactures, have strong claims upon your attention. A state of the

world is fast approaching, if it has not already arrived, in which it will be necessary for us to supply our wants by our own industry. International commerce will be restricted to fewer, or other articles; and our pursuits must necessarily be more diversified. To increase the variety of productions, and thereby enlarge the materials for internal trade, is an object worthy of the paternal care of the government. Our soil and climate are adapted to the cultivation of many articles of great commercial value, which have not hitherto come within the range of agricultural operations, for want of a knowledge of the process for producing them. The most important of these are the articles of silk, wines and hemp. They have all been partially attempted in this latitude of our country, with great success.[3]

Among the matters of interest relating to this subject, and which promise to satisfy the desires of those patriotic individuals, who have labored to introduce more science into practical agriculture, I notice, with pleasure, the dawnings of a scientific agricultural education. A school for that purpose is established in Oneida county, which has placed itself in the class of literary institutions under the care of the regents of the university. Students are there instructed in scientific and practical agriculture; are compelled to go through all its manual operations, and pay for their instruction by their labor. A principle, similar in some respects, is introduced into the polytechnic at Chitteningo, founded by and under the superintendence of Doctor Yates. In his school, which is designed to carry a pupil through all the sciences, he has provided for the instruction of such youth in the principles of husbandry, and other branches of education, as will volunteer to labor for their tuition and support. It is also deserving of notice, that he has admitted the students to a share in the govern-

[3] The New Berlin Hemp Company was incorporated by chapter 314, passed April 20.

ment of his school. He has established a miniature legislature for passing laws, and courts for trying offenders, where all the forms of election, legislation and judicial proceedings are observed. The students are represented in one branch of their legislature; the faculty form another, and the principal has a veto. A judge is appointed from among the officers, to preside in the court, for the trial of offences against their laws, with an appeal from the decisions of the court to the faculty and principal.

The general fund, on the 30th day of November, 1828, consisted of the following items, to wit:

Canal stock, bearing an interest of 5 per cent..	$280,000.00
Bank stock, (deducting $15,000 lost by the failure of the Hudson Bank).....	112,740.00
Bonds and mortgages for lands sold.....	818,826.00
Do for loans to individuals and others.....	395,100.00
Do for sundry debts due the state.....	23,319.00
Total	$1,629,985.00

The estimate of revenue from this fund, for the year ending 30th November, 1829, was $172,550, including the following items, which were not revenue, but capital, to wit:

Principal to be received on bonds and mortgages on lands sold...	$30,000.00	
Do on loans.....	20,000.00	
To be received on first payment for lands	5,000.00	
		55,000.00

Leaving the estimate of income, only.....	$117,550.00
The estimate of expenses for the same year, ending November 30th, 1829, was.....	291,500.00
Thus it appears that the expenses of that year, as estimated, would exceed the income of the general fund.....	$173,950.00

To meet the claims upon the treasury, and the expenses of the government for the year 1829, the canal stock belonging to the general fund ($280,000) has been sold; and that fund is indebted to the literature and school funds to the amount of $158,365.

The amount of bank stock has been also diminished $20,000, by the failure of the Columbia bank, during the past year; as it is supposed that the capital of the bank has been entirely lost.

The items which now compose the general fund, are:

Bonds and mortgages for lands sold.....	$806,313.00
Loans to individuals and others.....	386,895.00
Sundry debts due the state.....	23,319.00
And available bank stock.....	92,740.00
Making the total amount of the productive capital of the general fund.....	$1,309,267.00

There is also about 120,000 acres of land belonging to the general fund; but most of this land has been bought in for taxes, and is of little value. About 26,000 acres is all from which the State can expect to receive avails, in aid of the treasury.

The state owes no debt, except on account of the canals.

The ordinary expenses of the government for the ensuing year, are estimated at two hundred and sixty-four thousand dollars; to which is to be added one hundred and fifty-eight thousand three hundred and sixty-five dollars and fourteen cents, the amount due from the general fund to the literature and common school funds; making an aggregate of four hundred and twenty-two thousand three hundred and sixty-five dollars and fourteen cents. The means to meet these demands, consist of the avails of the contemplated sales for taxes, interest payable on bonds and mortgages, miscellaneous sources of revenue, and the balance in the treasury, the whole of which are estimated at

three hundred and six thousand three hundred and ninety-three dollars and fifty-six cents; showing a deficit of one hundred and fifteen thousand nine hundred and seventy-one dollars and fifty-eight cents. To meet which, resort may be had to the sale of the bank stock, ninety-two thousand seven hundred and forty dollars, and so much of the principal of the bonds and mortgages as can be collected.

On the 30th of November, 1826, the general fund amounted to.....	$2,637,936.00
And the balance in the treasury on that day, including the last receipt into the treasury from the half mill tax, (amounting to $147,-534) applicable to the ordinary expenses of the government, was.....	264,246.00

This balance was reduced on the 30th of November, 1827, to the sum of $115,028; showing a consumption that year, beyond the revenue arising from the general fund received into the treasury of $149,218.

The deficiencies in the revenue since the year 1827, have been supplied, solely, from the balance then in the treasury, and by the consumption of the principal of the general fund.

On the 30th of November, 1828, the balance in the treasury had been expended; $20,000 of the canal stock, belonging to the general fund, had been sold and expended; and the treasury was indebted $68,837, for the expenses of the preceding year.

The consumption in the year 1828, beyond the receipts into the treasury, was as follows, to wit:

Balance in the treasury 30th November, 1827.	$115,028.00
Canal stock sold.....	20,000.00
Claims upon the treasury.....	68,837.00
Making.....	$203,865.00

From the above causes, and by legislative acts in 1827, transferring

Canal stock to the literature fund.....	$150,000.00
Bank stock to the school fund.....	100,000.00
The balance of the loan of 1786 to ditto.....	33,616.00
By the sale of the Seneca Lock Navigation stock.....	23,218.00
And by the receipts of the principal of debts for lands sold.....	32,427.00
Total.....	$339,261.00

And by the subsequent receipts of the principal of debts, the general fund is now reduced as above stated, to the sum of one million three hundred and nine thousand two hundred and sixty-seven dollars; leaving claims upon the treasury for the balance of expenditures for the last year, to a considerable amount.

By the foregoing brief view of our finances, it will be seen that the general fund is rapidly diminishing; that our reliance for meeting future calls upon the treasury, to defray the current expenses of the government, is principally upon the government debtors; and that an active collection of those debts must be immediately commenced. If taxation is delayed a few years, the general fund will be entirely exhausted, and it will be necessary then to provide by tax, for the whole amount of the annual expenditures.

I have thought it my duty to lay this statement of the condition of the treasury before you, for the purpose of submitting to your consideration, whether it is good economy, whether it is compatible with the duty which the government owes to a progressive improvement of the condition of the state, to exhaust the general fund, and rely, in future, entirely upon direct taxation for the means to defray the annual expenses of the government, to give effective aid to necessary charities, to advance the interests

of knowledge, to multiply the objects of industry, to facilitate the means of internal communication and commerce, and to perform those other acts of sovereignty which a government owes to the prosperity of its citizens and to its own glory.

This is an interesting crisis in the affairs of our state, and a heavy responsibility rests upon the present, and upon the immediately succeeding legislatures. Our funds are diminishing to a point, while an extensive view of great national prosperity is opening upon us. We may enter and possess ourselves of its realities, or by a timorous, hesitating and narrow policy, it may pass by us as an unsubstantial vision.

Our state has doubled its population within the last twenty years, and has quintupled since 1790. In that year it formed less than a tenth of the population of the United States; it now forms a seventh: thus showing that it has increased in population beyond all example, and more rapidly than its proportion of the astonishing increase of the population of the United States. Although, like its sister states upon the Atlantic border, it is pouring its thousands and tens of thousands into the great central valley of the west, its own increase has not been materially retarded. It has now a population not far from one million nine hundred thousand, and is capable of sustaining at least eight millions of souls. And when we contemplate those changes in the pursuits of industry, which tend to compress us into more dense communities, and consider our capacities for abundant productions within a small compass, in the fertility of our soil, in the riches of our mines, and in our hydraulic facilities, we have great reason to believe, that the time is yet distant, when, under a judicious administration of affairs, a decline in the ratio of increase of wealth and population will be discernible. Is it not our duty, by a wise forethought, to lay the broad foundations of a policy, adapted not only to our present condition, but

fitted to sustain the state in her future progress to a glorious maturity?

A system of progressive improvements, by means of railroads and canals, has become engrafted upon the policy of our state, and should be kept steadily in view. The benefits which their construction will confer, depends upon the prudence of the legislative enactments concerning them.

The canal debt, on the 1st day of January, 1829, amounted to the sum of.....		$7,940,155.00
Erie and Champlain canal debt—		
In 6 per cent stock.....	$2,343,500.00	
5 do	4,409,665.00	
		$7,353,155.00
Oswego canal debt—		
In 5 per cent stock.....		437,000.00
Cayuga and Seneca canal debt—		
In 5 per cent stock.....		150,000.00
Making the above amount of.....		$7,940,155.00
Of this debt, there has been paid during the year ending on the 31st December last, of the 5 per cent Erie and Champlain canal stock, the sum of.....		$321,142.00
The Cayuga and Seneca canal debt has, within the same time, been increased by the issue of 5 per cent stock.....		$87,000.00

The whole canal debt, therefore, stood on the 1st day of January instant, as follows:

Erie and Champlain—	
Six per cent stock, payable 1st January, 1837	$2,943,500.00
Five per cent, payable in 1837 and 1845..	4,088,513.00
	$7,032,013.00

Oswego —	
Five per cent, payable in 1846 and 1849..	$437,000.00
Cayuga and Seneca —	
Five per cent, payable in 1846.....	237,000.00
Making.....	$7,706,013.00
The tolls received upon the canals during the year 1829, cannot yet be exactly ascertained; but it is supposed that the amount received upon the Erie and Champlain canals will not vary far from.....	$790,983.00
From this sum, there has been expended by the commissioners, superintendents, collectors, and other canal officers, about. $310,099.00	
For interest of debt..... 387,035.00	
	697,134.00
Leaving of tolls to be applied to the debt....	$93,849.00
In addition to this, the receipts from the auction duties belonging to this fund, will be about.....	209,052.00
From salt duties, about.....	140,844.00
From other sources, about.....	27,781.00
Making.....	$471,526.00
derived from the Erie and Champlain canal fund, to be applied towards the payment of that debt.	
The receipts from tolls on the Oswego canal will vary little from.....	$9,314.00
There has been received by the payments of principal and interest of bonds for lands sold, belonging to the Oswego canal fund..	6,607.00
And from leases of surplus water.....	723.00
Making.....	$16,644.00

There has been expended by the superintendents and collectors, about the sum of	$14,585.00	
For interest of debt	21,850.00	
		36,435.00
Leaving a balance against the fund of...		$19,789.00

The claims against that fund have been answered, by an exchange with the Erie and Champlain canal fund of bonds for lands sold, for stock which has been converted into money, and by money borrowed of that fund, for which a balance now remains due of $11,613.00.

There is belonging to the Oswego canal fund in lands, and bonds for lands sold, from $150,000 to $200,000.

There is no auxiliary fund belonging to the Cayuga and Seneca canal. The tolls received during the last year will not vary far from		$7,905.00
The expenses of superintendence and collection, for the last year, exclusive of the expenses of the commissioners, will be about	$9,049.00	
Interest upon the debt	9,956.00	
		19,005.00
Leaving a deficit in the revenue of.....		$11,100.00

The funds which have, thus far, been applied towards the reduction of the interest and principal of the Erie and Champlain canal debt, have been derived from tolls, from the duties on auctions, and salt manufactured within the state. These funds were appropriated by the law, authorizing the construction of these canals, and have always produced more than enough to pay the interest. They are

guaranteed by the constitution, and cannot be diverted to any other purposes, until the objects of their appropriation are fulfilled. The demands upon these funds for the payment of interest and repairs, and other expenses, although considerable, will be satisfied, and still leave a large annual surplus, applicable to the extinguishment of the principal; and we have the pleasing prospect, that in a few years that debt will be entirely extinguished.

The payment of the debt, however, may be retarded by various causes: the carrying may be diverted into other channels — more serious repairs may be necessary than have been experienced or expected — new locks and double locks, and other facilities for expediting transportation, may become indispensable — a change may be wrought in the policy of our laws, materially affecting the duties — and when the debt is paid, or nearly so, modifications of the tolls, and of the salt and auction duties, may be deemed politic, just and necessary.

Our funds, however, applicable to the extension of our public works, may be augmented, at no distant day, from a new source. The duties upon the importation of merchandize are secured by the constitution of the United States, to the general government, and have been its great source of revenue for all purposes. In a very few years, the national debt will be paid off, and as but a small portion of the revenue will be consumed in conducting the affairs of the Union, within the constitutional limits, and as there are prudential reasons for continuing the duties to a certain extent, there can be no valid objection to the distribution of the surplus revenue among the states, to be disposed of at their discretion. If constitutional obstacles exist against the measure, they may be removed by constitutional means.

During the last session of the legislature, laws were passed directing surveys and estimates to be made in

reference to the construction of the Chenango, Chemung, and Crooked Lake canals, and authorizing the canal commissioners to construct them on certain conditions. The officers who have made examinations in relation to these contemplated works, will furnish you with such information as will enable you to act understandingly, and adopt such further measures as may be required.

The loan of the credit of the state to the Hudson and Delaware canal company, last winter, by authorizing issues of stock to the amount of three hundred thousand dollars, I am happy to state, has enabled that company to complete their work. They have sold fifty-eight thousand dollars of the stock, and pledged the residue for money borrowed, except thirty-seven thousand dollars, which they have not needed. They commenced transporting coal in October, and on the 19th day of December last, had delivered, at tide water, on the Hudson, seven thousand tons of a good quality, which was immediately sold at from seven dollars and fifty cents to eight dollars per ton. The company is now making arrangements to transport the next season, upon their railroad and canal to the Hudson, three hundred and sixty tons per day, which I am assured, they will be able to sell to purchasers at reduced prices.

During the session of 1818, the Governor was authorized to settle the claims of the state against the United States for aid of various kinds afforded them during the late war Negotiations were entered into, and considerable repayments were made on that account, although claims to a considerable amount remain to be adjusted. Further negotiations were suspended by the repeal of that law in 1826. There is, however, an acknowledged balance on the property account, for arms and equipments. It would be desirable to receive that balance in field ordnance for the supply of the artillery companies, forty of which are now destitute, and our arsenals do not possess the means of supplying

their wants. It is submitted to your consideration, whether you will authorize the negotiations to be renewed for that purpose.[4]

At the same time, another matter of much moment might be made the subject of negotiation.

The fortifying the harbor of the city of New York, the commercial emporium, not only of the state, but of the nation on the eastern border, is of the first importance in case of war, and has attracted the attention of the general government, which is now erecting a very strong work, Fort Hamilton, on the eastern side of the Narrows. The outer defence of that harbor will not be complete, until a similar erection is made on the opposite side; and I perceive that the government contemplate a work there, as part of their cordon of defence for the seaboard. During the late war, the state expended at least three hundred and fifty thousand dollars on works at that point, known as the fortifications on Staten Island, which were never entirely finished, and are now in a state of decay. The advanced state of other similar public works, and the prosperous condition of the finances of the general government, indicate the present as a favorable time to treat for the sale of those works to the government. By an act of 1818, the Governor was authorized to institute a negotiation for the sale of those fortifications, and the lands connected therewith, and was directed to report to the legislature. Nothing effectual was done under that law. In 1826 a survey and map, and estimate of their value, were directed to be made. It is sub-

[4] A concurrent resolution was adopted requiring the comptroller to arrange the accounts and claims of the State against the United States, and forward the same to the New York delegation in Congress and request the enactment of a law for their settlement. The resolution also provided for a settlement of the ordnance account between the State and the United States, and authorized the payment of the account in ordnance and military stores. The appropriation act, chapter 334, authorized the Governor to expend not exceeding $100 for the purpose of carrying the resolution into effect.

mitted to your consideration, whether further legislation on that subject is not expedient.[5]

By a law of the last session, the person administering the government was authorized to treat with the first christian party of the Oneida Indians, and the Orchard party of the same tribe, for the purchase of their lands; and to appoint an agent to accompany such of them as should choose to emigrate, to Green Bay. Under this law, the late Governor concluded a treaty with the first christian party, for the purchase of a portion of their lands; and at an early period of the summer, I appointed an agent, who accompanied a large party of them, and saw them comfortably settled. After his return, and in the month of September last, I concluded a treaty with the same party for the purchase of the residue of their lands. It is supposed that the remainder of the people of that party will emigrate to Green Bay, in the course of the next summer.

By these purchases, we have become possessed of about three thousand four hundred and seventy acres of valuable land in the heart of the State, which will soon be put into useful cultivation by respectable freeholders; and have removed thereby, from a state of temptation and misery, to a situation better fitted to their natural habits and the improvement of their condition, a small degenerated remnant of a once formidable and heroic race. It is to be hoped, that those who remain will be tempted, by the improved condition of their brethren, soon to follow their example.

In fulfillment of the duty imposed upon me by the act of the last session, to create a fund for the benefit of the creditors of certain moneyed corporations, I have designated the first Monday in February next, as the day for the meeting of the delegates of the several banks, at the

[5] A concurrent resolution was adopted requesting the Governor to continue negotiations for the sale of the Staten Island fortifications to the general government, and to carry into effect, so far as practicable, the act on this subject passed in 1826.

city of New York, and the village of Auburn, to appoint bank commissioners under that law.

The provisions of the law have received the decided approbation of the public; and it is to be regretted that it has not been satisfactory to all the existing banks. Those in the city of New York are the principal complainants; although I learn from other parts of the State, that the severity of those provisions in the revised laws, which are made, by reference, part of the general law of last winter, will tend to weaken, rather than strengthen the public security, by driving men of character and responsibility from the direction. I have reason to believe that the banks in New York are now prepared to relinquish their opposition to the safety fund and supervision, and accept their charters, provided a modification of the harsh features of the revised statutes can be obtained, and the local tax, now imposed directly upon the banks, be withdrawn, or placed upon the stockholders.

The provisions of the revised statutes, from sections eleven to seventeen inclusive, were adopted previous to, and without reference to the general law, and were supposed to contain within themselves the best security to the community. It is worthy of consideration, whether the law of last winter, creating a safety fund, and a board of visiting and examining commissioners, does not afford all the guarantee for the soundness of bills, which it is in the power of legislation to devise.[6]

If an application should be made on the part of the city banks, your sense of their intimate connection with the prosperity of the city, and their importance to the commercial operations of the State, will unquestionably induce you to give to it a favorable consideration.

The unfortunate controversy between this state and New Jersey, respecting the boundary line, still continues to ex-

[6] Chapter 71, passed March 8, 1830, repealed certain provisions of the Revised Statutes relative to the liability of directors of monied corporations.

cite much feeling, and has been productive of some violence between citizens of the respective states. To bring the question of right to a legal decision, New Jersey has seen fit to institute a suit against this State in the United States court. I have employed able counsel to assist the attorney general; and they, on consultation, have come to the conclusion, that under existing laws, that court cannot take cognizance of the cause, and have therefore declined to appear. It is certainly desirable that this source of irritation between us and our sister State, should cease to exist; and I respectfully submit to your wisdom to devise suitable measures for its removal. I send you herewith the attorney general's report on that subject.

One of the suits instituted on the claim of John Jacob Astor against the grantees of the State in Putnam county, was tried in the circuit court of the United States, held during the month of October last, and resulted in a verdict for the plaintiff. A case has been made to be submitted to the supreme court, embracing many questions of law, upon which the counsel for the State have hopes of a favorable issue. The cause is expected to be brought to a hearing at the opening of the court in January; and from its importance, I have deemed it necessary to direct the attorney general, whose report is herewith transmitted, to attend the argument at Washington.

The Revised Statutes went into full operation on the first day of the present month. Their recent enactment will relieve you, for the present, from much legislation on general subjects. Our laws are now clothed in plain language, collated and arranged under proper heads, amended in many respects, and put into a shape adapted to long continuance. This revision has been perfected with great industry and ability and is highly creditable to the distinguished gentlemen who were charged with it, and to the legislative bodies which passed upon and adopted the result of their labors.

Our late Governor, whose administration, although of short duration, has left its impress upon our public policy, presented forcibly to the consideration of the last legislature, the propriety of laws to prevent the corrupting tendency of the use of money at elections. A law was passed in pursuance of his suggestions, which has had the most salutary effect. We cannot begin too early to surround our elective franchise with defences against the approach of impurity. The example of good men, with occasional amendments of the law, and a strict enforcement of its penalties, will, I am confident, produce the desired results.

I cannot close this communication, without referring to an illustration of the virtuous tendency of our representative system, and the corrective energy of public opinion. I can speak of it without reproach, as it is a part of the public history of our legislation, that at a former period, individuals congregated for the sake of pecuniary gratifications, and forced their services upon those who had legislative grants in view, and endeavored, by their combined efforts, to control the passage of laws. Encouraged by their numbers, they openly boasted of an influence which they did not possess, and frequently threw a suspicion upon the purity of individual members. They have not appeared, embodied, for several years; and it is the strongest proof of their entire dispersion, that the whole subject of rechartering the banks, and revising our moneyed institutions, was acted upon at the last session, without the least suspicion of improper extraneous influence.

E. T. THROOP.

Albany, January 5, 1830.

SPECIAL MESSAGES.

January 22. To the Assembly: Transmitting a communication from the agent of the federal government, requesting a cession of jurisdiction over land purchased for use in connection with Watervliet arsenal.[7]

January 22. To the Assembly: Transmitting communications from the inspectors of beef and pork and of staves and heading in the city of New York.

January 27. To the Senate: Transmitting a report from John C. Spencer, special counsel in the Morgan matter. See Assembly Documents 1830, No. 67.[8]

January 29. To the Assembly: Transmitting resolutions adopted by the Legislature of Georgia, one of which disapproved the Louisiana proposition extending the term of the president and vice-president to six years, and making the president ineligible to re-election; another approved the Missouri proposition to provide for a uniform plan of electing president and vice-president, "and to give the people of the United States the privilege of voting directly for the president and vice-president, with out the intervention of electors; provided such alteration can be so made that the sovereignty of the states be not invaded, and the weight of the states, and the present basis of representation be retained according to the existing provisions of the Constitution." Also an independent resolution recommending an amendment depriving the house of representatives of the right to determine the choice of president and vice-president, and that each state have an equal vote on such decision in the last resort.

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[7] The Watervliet arsenal cession was granted by chapter 332, passed April 20.

[8] By chapter 241, passed April 17, a special circuit court, a court of oyer and terminer and jail delivery was appointed to be held in the county of Niagara on the first Monday of June, 1830, and the act of 1828 providing for special counsel to investigate the Morgan matter was continued in force until May 1, 1831.

The Lieutenant-Governor also transmitted resolutions adopted by the legislature of Vermont, recommending a uniform method of choosing president and vice-president, declaring it inexpedient to change the existing rule requiring the choice of president and vice-president to be made by presidential electors, and also that it was inexpedient to deprive the house of representatives of the right in an emergency to determine the choice of the president and vice president. Also a resolution disapproving the doctrines announced by the legislatures of South Carolina, Georgia, Virginia and Missouri, denying to Congress the constitutional power to regulate the tariff, and to make appropriations for internal improvements.

January 30. To the Assembly: Transmitting reports from the inspectors of lumber in Albany, and also from the inspector of beef and pork in Madison county.

February 2. To the Assembly: Transmitting the report of the inspector of beef and pork in Albany.

February 5. To the Assembly: Transmitting a resolution adopted by the Legislature of Pennsylvania, declaring that "the tariff of 1828 accords with the spirit of the constitution of the United States, and that it maintains the true principles of protection to the industry of the country, against foreign policy and legislation."

February 5. To the Assembly: Transmitting the reports of inspectors of beef and pork in the counties of New York and Tompkins, sole leather in St. Lawrence County, lumber in Kings.

February 8. To the Assembly: Transmitting the annual report of the Adjutant General, and also the report of the Commissary General.

February 11. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

March 1 and 2. To the Assembly and Senate, respectively:

"GENTLEMEN.—I have recently received official information of the condition of our state penitentiaries, which I feel bound to lay before you.

The south wing of the Auburn prison was constructed upon the model of the old New York state prison, with rooms sufficiently capacious to contain from five to eight convicts each. The north wing was subsequently built upon a new model, and contains five hundred and fifty cells, adapted to the separate imprisonment of convicts. Since the construction of cells, the south wing has been considered useless as a prison, on account of its total unfitness to the system which has been so happily adopted and successfully pursued.

The agent of that prison reported to me, under date of the thirtieth day of January last, that he had then under his charge, six hundred and forty-five convicts, twenty-three of whom were females. That the females were confined together in one room, and that he had been compelled to confine the excess of males over five hundred and fifty, in the south wing; and in some cases, for want of other accommodations, two in the same room.

For relief against a farther excessive increase, I issued an order, in conformity to the provisions of the Revised Statutes, directing the future convicts from the counties of Herkimer, Oneida, Otsego, Chenango, and Broome, to be sent to the prison at Sing Sing.

The agent of the Sing Sing prison reports, under date of 17th February last, that there were then six hundred and three convicts in the prison under his charge, and that that prison contains eight hundred cells. He estimates that there will probably be seven hundred and eighty-eight convicts under his charge, at the close of this year, without taking into the estimate those to be expected from the recently added territory. Should the increase of convicts from the territory assigned by law to the Auburn prison, during the present year, be the same as during the last

year, there will, at the end of the year, be in both prisons, about fifteen hundred convicts, and thirteen hundred and fifty cells.

Being fully persuaded that the discipline which has enabled the keepers of our prisons to render the labor of the convicts productive, and above all, which has produced the moral reformation of offenders, is entirely dependent upon that feature of the system, solitary dormitories; I respectfully submit to you the propriety of authorizing the immediate construction of so many additional cells as may be necessary, until a plan of more extensive enlargement or other relief may be deliberately adopted. The reports of the agents of both prisons, which accompany this communication, will furnish you with important information with regard to the proposed improvements.

I am informed, by the agent of the Sing Sing prison, that two hundred cells may be constructed there, by adding another story to the present building, or that the number of cells may be otherwise increased, in harmony with the original plan of building. If the interior of the south wing of the Auburn prison should be taken out, a block of five hundred and fifty cells could be constructed within the present exterior walls, corresponding exactly with the north wing. In this event, it would be necessary to enlarge the prison yard and increase the workshops. Whether this or some other alteration should be adopted there, is a question connected with various considerations, and which cannot be satisfactorily determined, without the knowledge of facts which require more time to procure than is probably at the disposal of the Legislature during its present session.[9]

E. T. THROOP."

Albany, March 1, 1830.

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[9] Chapter 331, passed April 20, appropriated $10,000 for the erection of two hundred additional cells at the Mount Pleasant Prison, either by constructing an additional story on the existing prison or in any other manner consistent with the plan of the prison building.

March 29. To the Senate: Transmitting a communication from the Attorney General relative to the trial of one of the causes on the Astor claim.

April 1. To the Senate: Transmitting a resolution adopted by the Legislature of Delaware approving the tariff act of 1828; also a resolution from the Legislature of Ohio approving the Pennsylvania resolution relative to tariff. See special message of February 5.

Also transmitting a resolution adopted by the Legislature of Vermont requesting Congress to provide for constructing fortifications "on the north point of Vineyard, Isle la Motte, and on the great shoals between said point and Point-au-fer in the state of New York."

April 20. The Legislature adjourned without day.

1831. JANUARY 4. LEGISLATURE, FIFTY-FOURTH SESSION.

ENOS T. THROOP, Governor.

ANNUAL MESSAGE:

GENTLEMEN OF THE SENATE, AND OF THE ASSEMBLY.—I should do injustice to my feelings, if I were to refrain from expressing, on this occasion, my deep sense of the high confidence reposed in me by the people of this State, at the recent election. I shall endeavor to make a suitable return, by devoting myself diligently to the discharge of the duties of the department entrusted to my care, regardless of every consideration but the public good. Conscious of my imperfections, it is no small satisfaction to me, to know, that the executive power under our government is so wisely circumscribed, that every measure emanating from it, affecting the policy of our laws, or the substantial interests of the people, must pass the supervision of your body,

where the errors of a single judgment will receive due correction from the delegated wisdom of the State.

As a member of the Union, this State participates largely in its glory, and shares in its prosperity; and at no period since the revolution have we had greater reason to rejoice in the wisdom of its councils, or to feel a just pride at its elevated character as one of the family of nations. The individual at its head, renowned for his great services and devotedness to his country in another capacity, has, in his civil station, shown an intimate knowledge of the cardinal interests of the nation, a familiarity with his duties, and an intrepidity in the discharge of them, which cannot commend him more to our affections or respect, but which demand for him the admiration of the present age, and will secure to him the lasting gratitude of his country. The two leading principles of his administration, which lie at the foundation of our future prosperity as a nation, have been asserted by him in the discharge of his duties, in a manner which shows that he loves his country more than he fears the loss of power, or the efforts of disappointed cupidity and ambition. I allude to the payment of the national debt, and the restraining of the power of congress within the limits plainly marked out by the compact between the states. His veto upon the Maysville road bill, the first of a series of measures for internal improvement projected for the sanction of congress and estimated to cost more than ninety-six millions of dollars, will remain upon record a durable monument of his correct views of public policy and constitutional rights, as well as of his moral courage and uncompromising patriotism.

Our foreign relations are amicable, and we have no reason to apprehend a speedy rupture with any nation.

Enjoying, as we do, a high degree of happiness under our free institutions, we cannot be insensible to the influence of our example upon the people of other countries, nor unmoved by their efforts to assimilate their governments

to our own. The late Spanish colonies at the south, having achieved their independence, are yet violently convulsed by efforts to organize their governments upon principles, and with modifications, which will ensure for them permanent tranquillity. The recent revolutionary movements in France afford a bright hope that this nation, distinguished for heroism and science, vividly associated with the recollections of our early struggle for independence, and endeared to us by so many ties, has at last found relief from an arbitrary abridgment of individual rights, in the full establishment of the authority of the people. The people under other European sovereignties seem stirred by bordering commotions; and we have reason to believe, that in the progress of light and knowledge, we, now the youngest of nations, will, at no distant period, be hailed as the elder brother of legitimate governments. It becomes us, for our own good as well as for the cause of struggling humanity, to manifest to the world, that a republican government, firmly based upon the will of a well instructed and virtuous people, is the most just and enduring, and exempt from those disturbing and destroying factions, which tend to anarchy and terminate in despotism.

In regard to our internal concerns, your labors will be directed towards providing for the due administration of justice; the improvement of the moral and intellectual condition of the people; and the development and application of the physical resources of the State.

We can look with satisfaction upon what has already been accomplished in relation to these objects. Our municipal laws have been relieved from much which belonged to a less enlightened age; the severity of our criminal code has been materially mitigated; large provision has been made for public education; and our canals, dispensing their benefits through various channels, are evidence that an enlightened spirit of public improvement has guided our counsels. There is yet, however, much to do; and all these subjects will require your ceaseless exertions.

To what extent the industry of the country may be facilitated by the expenditure of money on works of public utility, depends essentially upon the condition of the treasury, and our means for producing revenue. Under no form of government can a people be happy and prosperous, if a careless and prodigal use of the treasures and credit of the State is indulged.

In my last annual message, I presented a review of the public funds from the year 1826, and showed a diminution of the capital of the general fund during that period, from two millions six hundred and thirty-seven thousand nine hundred and thirty-six dollars, to one million three hundred and forty-four thousand two hundred and sixty-eight dollars. That capital has sustained a farther reduction during the past year, so that it now remains at $1,312,466.

That amount made up of the following items, viz:

Bank stock	$126,965.00
Bonds and mortgages, for lands sold	792,568.47
Mortgages for loans to individuals	369,771.34
" " debts due the state	23,161.19
	$1,312,466.00

The reduction of the capital during the last year has been by means of the sale of the Mohawk bank stock, and by receipts of the principal moneys upon bonds and mortgages.

The estimated receipts from the general fund for the ensuing year, are of

Revenue	$78,500.00
Capital	35,000.00
Whole receipts	$113,500.00

The estimated ordinary expenses chargeable upon this fund for the present year, are three hundred two thousand two hundred dollars, showing a deficiency in the receipts

to meet the ordinary expenses of one hundred eighty-eight thousand seven hundred dollars. Included in this estimate of expenses, are the deficiencies of the income of the Oswego, Cayuga and Seneca canals, which are by law made chargeable upon the general fund.

It is necessary for a true understanding of the financial condition of the state to know, that the actual annual expenditures of the government, always far exceed the estimates, owing to contingent appropriations, which are not susceptible of calculation. Thus the estimate of expenses for the last year was two hundred and sixty-four thousand dollars, whereas the actual expenditures, including legislative appropriations, have amounted to the sum of three hundred forty-nine thousand one hundred thirteen dollars. For the purpose of more precise information, I have caused an average to be made, both of the estimated expenses, and the actual expenditures, chargeable upon the general fund from the year 1825, to 1829, both inclusive, and find the result to be, that the average estimated expenses for each of these years is two hundred and eighty-two thousand five hundred and twenty dollars, while the actual average payments from the treasury, is three hundred and seventy-six thousand seven hundred and forty-seven dollars; a sum, greater in each year, than the estimate, by ninety-four thousand two hundred and forty-seven dollars. This difference is made principally by the annual legislative appropriations.

The resources of the treasury have been lessened, by the annual consumption of principal of the general fund, the appropriations of the public lands, and other funds to common schools, literature, and canals, and by the withdrawal of the state tax, and the diverting of other sources of revenue.

Thus in 1816, a state tax of two mills upon a dollar was imposed; in 1819, it was reduced to one mill; in 1825, it was farther reduced to half a mill; and in 1827, it ceased

by its own limitation. Since the last period no tax has been levied, although the treasury has been aided in its operations by the receipts of arrears of taxes. So also in 1817, the duties on salt, and sales at auction, were diverted from the general fund, and added to the revenues of the canal fund.

By these means the amount of the general fund has become so far reduced, that it is able no longer, either by its revenue or capital, to meet the annual demands for current expenses.

No government can be administered without money, and the means of defraying its expenses, must in some shape be furnished by those for whose benefit it is administered. It therefore becomes necessary to consider from what sources our exhausted treasury can be replenished. This involves an inquiry into the means placed at the disposal of the Legislature for that purpose. These means are taxation, or loans on the credit of the government. If money is borrowed, the interest must be paid, and eventually the capital. If in addition to the current annual disbursements, the money to pay the interest on previous loans must also be borrowed, it is obvious that with compound interest there will be a rapid accumulation of debt, and the public creditor will ultimately require some further security for his loans, than the credit of the state. Such measures would result in impaired public credit; taxation could not be long delayed; and it is to be feared, that when it becomes necessary to levy upon the people the amount of the current expenses, together with the interest accruing upon debts incurred for the expenses of preceding years, swelled by compound interest, the taxation will be found burdensome and may become perpetual.

There is no mystery in financial operations, save what ingenious men have found necessary to throw around them, to conceal their measures from the public knowledge. What would be said of a farmer who should thus manage his pri-

vate concerns, and trust to borrowing on the credit of his farm, for the annual expenses of his living, instead of deriving support from it by his earnings?

I should be wanting in duty, if I should forbear to pursue this interesting subject still farther, for I deem it of vital importance. We are still a young nation, and have experienced nothing but increasing prosperity, and having now arrived at a point where our treasury must be permanently supplied, or a hazardous experiment upon our credit made, it is our own fault if we do not choose that alternative which we know to be safe, and to which common prudence directly points.

As we have little to appeal to, in our own experience, we should not shut our eyes to the light reflected by the history of other nations. An able English historian, in noticing a temporary debt, created in the reign of Henry the sixth, makes the following remarks: "The first instance of a debt contracted upon parliamentary security, occurs in this reign. The commencement of this practice deserves to be noted; a practice the more likely to become pernicious, the more a nation advances in opulence and credit. The ruinous effects of it are now become too apparent, and threaten the very existence of the nation."

Shortly before the commencement of the last century, when William the third came to the throne, and found it necessary, in order to defend his continental possessions and to restrain the ambition of France, to have more money than could be raised by the ordinary means of revenue, a resort was first had to temporary loans, pledging the annual income to repay them. As this necessity for money continued from year to year, the debt was left unpaid, and the revenues were appropriated to pay the interest of it; and it then occurred to his ingenious financiers that a national debt was a national blessing. Thus within eight years after he ascended the throne, a public debt had accumulated, equal in amount to one hundred millions of

dollars. To pay the interest of that debt, and to defray the current expenses of the government, independently of indirect taxation by means of customs, direct taxes were imposed upon the people in every possible shape. They were imposed upon their persons, upon the value of their real and personal property, upon their income, upon their stock in trade, upon births and burials, upon beer, cider, perry, and all the productions of industry, commercial, manufacturing and agricultural. These taxes have been continued, and additional ones imposed upon every new object, created by the trade or industry of the nation, as it was developed, until the British empire, with a population of twenty-two millions of persons, is burthened with a debt amounting to about three thousand five hundred millions of dollars.

It is an extraordinary fact, and shows the evils which a maladministration may bring upon a community, that the period of time, which enlarged the constitutional privileges of the English people, gave birth to legislative measures, which drew a new line of distinction between the people, and divided them into public creditors and laborers. All the wealth of the nation has been grasped by the comparatively few holders of government stock, and the privilege to support them, by the earnings of their labor, is nearly all that has been left to the many.

When we look at our means of raising revenue, it will be perceived that a state debt is a mortgage upon the persons, the property and the industry of our citizens, and the public creditor will soon call for a contribution from those sources. With our present laws, which secure to every man the enjoyment of the profits of his industry, talents and ingenuity, we can look without concern or envy, upon the greatest amount of wealth which any individual has accumulated by industry and economy. He has a right to enjoy it, and it will be soon distributed by his successors. But there is great danger in creating a mass

of wealth, in the hands of individuals, which suffers no diminution, but accumulates from generation to generation, sustained by the industry of the country, and guaranteed by the laws. We have in vain abolished entails, if a more durable species of property is created, levying contributions, not by rents, but by means of taxes.

It is a plausible doctrine, which has been urged with some success, that it is no matter how much money is expended by government, provided it is employed upon suitable enterprises for improving our internal condition; because the money remains among the people, and gives them employment.

This is indeed true, when the money is disbursed from a full treasury. But when the money expended, is borrowed of individuals, on legislative security, and interest is to be paid for its use, to be collected by taxation, upon the annual products of the labor of the people; the money remains among us; the aggregate wealth of the country may be increased; but it is unequally divided; an undue proportion goes into the hands of the few who monopolize the stock, while the remainder of the people are impoverished by the operation.

I have entered into much detail upon this important subject, from a deep conviction, that it is too intimately connected with the public welfare to be lightly passed over, and that the time has now arrived, when it becomes a duty of the people to understand and reflect upon this matter.

I have been placed at the head of the government at a period when it must determine upon the policy to be pursued, in a new and untried state of things. Hitherto the state has been rich in lands and public funds, and aided by taxes, which have ceased, it has been able to meet the payment of temporary loans, the revolutionary claims, and the annual expense of administering the government. This public property is now nearly exhausted, not by the ordi-

nary expenses, but by contributions to public works, and as the basis of special funds.[1]

Internal improvements, by means of canals and railroads, have become fixed objects of legislative care, and are among the most interesting subjects which will claim your attention. Their influence in diversifying the pursuits of labor, and equalizing the value of its products, in adding to individual and aggregate wealth, stimulating enterprise, and binding society together in ties of amity and interest, is not only acknowledged in theory, but has been practically demonstrated by our experience. These considerations will induce you to examine with industry and lively solicitude, into the means within your control for their further prosecution.

Our country is peculiarly well adapted to the construction of canals and railroads, and affords in all directions, from its soil, its forests and its mines, those ponderous productions, which owe most of their value in market to the cheapness of transportation. Each of these modes of communication has its peculiar merit, and is yet susceptible of much improvement. It remains to be seen what elevations of surface may be overcome by stationary power, as part of the line of a canal, an improvement deserving more attention from those conversant with such subjects, than it seems to have received.[2]

Experiments made in England, during the past year, with locomotive engines, upon a railroad between Liverpool and Manchester, have produced results more favorable than were anticipated. Loaded carriages now pass regularly between those cities, at the rate of eighteen miles

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[1] Chapter 320, passed April 26, "relative to the finances of this state, and the duties of the comptroller and the commissioners of the canal fund" contained numerous details concerning the financial administration, but without effecting any change of policy. The act among other things defined the fiscal year which was to begin on the 1st of October.

[2] Several statutes were passed providing for the survey and construction of canals.

an hour. Indeed light carriages have been moved with a rapidity which almost exceeds belief. An enterprising company is now constructing a railroad between this city and Schenectady, which, as a specimen of such works, and as affording means to judge of their usefulness and cost, will be of great public advantage. It will probably be finished during the present year.

While canals, peculiarly adapted to the transportation of bulky articles, may be made in suitable situations, railroads, on account of their fitness for rapid transmission, to operate at seasons when canals are useless, and perhaps to overcome elevations insurmountable by them, will no doubt, in future times, be extensively distributed throughout the state. There are few obstacles in any part of the state, which may not be overcome by one or the other of these improvements.

An enlightened popular government cannot fail to discover the advantages of such works, and is well fitted to prosecute them judiciously. As the people contribute the means for their construction, they will not fail to discover the proper period for commencing them, and the extent to which they should be carried. The successful experiment which has already been made, while it has shed glory upon the state, affords a stimulus for the prosecution of similar enterprise; and it is not surprising, that some parts of the state, supposed to be peculiarly adapted by nature to receive these helps from art, should exhibit an impatience for their immediate commencement. But any disposition that may be manifested to enter prematurely upon the prosecution of these works, will be restrained by the cooler judgment of those parts of the state, which are called upon to contribute to the expense, but which participate indirectly only in their advantages.[3]

In determining upon the expediency of beginning any new work, it will be proper to consider its public benefits,

[3] Several railroad companies were chartered at this session.

its probable returns of revenue, and the means of the state. If the state possesses funds for the object, without imposing any burdens upon the people, it will be sufficient to look at its bearings upon the public prosperity, without reference to revenue. If the state should not be in that condition, then it is necessary, preliminarily to ascertain with considerable exactness, that it will contribute, in tolls, sufficient to pay for necessary repairs and attendance, the interest of the debt to be created on its account, and within a reasonable time, the principal. If it will not do this, then your duty requires you to determine whether the people will consent to be taxed to make up the deficiency of its revenue, and if so, to impose such tax, contemporaneously with the act authorizing its construction.

Acting under a due sense of the importance of these precautionary considerations, I do not doubt, that your measures will satisfy the reasonable desire of the public to continuue the march of internal improvement.

The Erie canal passes through the center of the state, uniting the tide waters of the Hudson, with lake Erie, and affords the means of an easy interchange of commodities between the different parts of the state, and an opening to our great commercial city, for the trade of the Canadas and the states bordering upon the upper lakes. By means of smaller works, completed and in progress, we have connected its advantages with the navigation of the Ontario, Champlain, Onondaga, Cayuga, Seneca and Crooked lakes, and the western branch of the Susquehannah river. Having thus, since the year 1817, opened communications between all our cities, and nearly all our interior navigable waters, we cannot take to ourselves the reproach that the march of internal improvement has been slow, or harbor the thought that its further progress is to be arrested.

The Erie and Champlain canals were projected with great wisdom, and at their commencement, an appropriation was made for them from the general fund, which has

been sufficient, at all times, to pay the interest of the moneys borrowed. The credit of the state was thereby so firmly established, that for all the later loans, to more than half the whole amount, capitalists were induced to pay a premium upon five per cent stock. Those canals have drawn from the funds of the state, to the amount only of the duties upon salt, and sales at auction; and their successful operation promises, that they will speedily pay their debt, provided the constitutional protection of their fund is duly respected. When that period arrives, the revenues from salt and auction duties, and tolls of the Erie and Champlain canals, will be under the exclusive control of the legislature. How far it will then be deemed public justice or good policy to reduce the amount of the tolls, or to continue them for the purpose of extending our works of internal improvement, will depend entirely upon the future representatives of the people.[4]

In reference to the subject of revenue and internal improvements, I submitted to the consideration of the last legislature, the propriety of taking measures to procure a distribution of the surplus revenue of the United States. The same suggestion was made by the President to congress, in his first message, and has been renewed by him in his late communication to that body. I find also that one of my most distinguished predecessors alluded to the same subject in his message in 1827.* I esteem it of sufficient importance to renew the suggestion, and press it earnestly upon your consideration. We have the fullest assurance, that the President will steadily adhere to his doctrines regarding the power of congress over roads and canals, so

[4] A constitutional amendment proposed at this session, and adopted and approved in 1833, authorized a reduction of salt duties to an amount not less than six cents per bushel, but they were to be appropriated for canal purposes as under the existing constitution.

* Governor De Witt Clinton, *ante*, p. 155.

that the payment of the national debt, except the three per cents, will be provided for within three years.[5]

At the adoption of the federal constitution, it was deemed proper to place all the revenues derived from customs, at the disposal of the general government.[a] Inasmuch as that government assumed the payment of the public debt, and was charged with our foreign relations, the protection of commerce, and the military and naval defence of the country, it certainly was a wise and equitable disposition of that great source of revenue: yet, thereby, the individual states are deprived of those ready means of supplying their wants by indirect taxation, upon which every nation mainly relies; and those states which have no demesnes, or other public funds, are constrained to raise revenue by a direct tax. This latter kind of taxation is, from the nature of it, unequal, and draws more than a due proportion from the farmer. During the last forty years, we have passed through all the vicissitudes to which our government is exposed; and experience has shown, that without burdening commerce, the means of revenue placed at the disposal of congress, will yield much more than can be required to administer the government in peace, or to recover from extraordinary demands upon the treasury during war. As proof of this, the government has expended, on questionable authority, large sums of money for internal improvements; while it has continued to pay more than ten millions of dollars annually towards reducing the public debt. There is, therefore, abundant reason to believe, that a portion of the revenue from customs may, without inconvenience, be permanently appropriated, and restored to the

[5] The Assembly adopted a resolution recommending a distribution of the surplus revenues of the United States among the several states on the basis of population. A committee of the senate submitted a long report on this subject, embodying the general results of the policy recommended by the Assembly, but there was no concurrent action.

[a] U. S. Const. art. 1, § 8, clause 1.

several states, in such a manner as not to interfere with the necessary paramount control over their collection by the national authorities.

It is, without doubt, the most just and economical mode of collecting taxes. It is done by fewer officers, and without that offensive inquisition into the affairs of individuals, which is an indispensable concomitant of direct internal taxation. By this mode, each individual fixes the amount of tax upon himself, and pays in proportion to his means, by the consumption of those articles of foreign production upon which the duties are levied.

It is, at least, questionable, whether there are not sound objections to a mere distribution of the surplus revenues. Among these may be reckoned the uncertainty of the amount, which changes in the tariff rates may occasion; and the withholding of dividends entirely, in national emergencies, demanding extraordinary expenditures. The contingent nature of the supply might prevent the States from engaging in enterprises of magnitude, or produce embarrassments should they be undertaken. This might be remedied by providing that a fixed sum shall be annually distributed. The amount of that sum might be such as not to interfere with the reduction of the present tariff of duties, should the public interest at any time require it. Population is obviously the true basis for distribution, inasmuch as the money would by that rule return to those who contributed it. Our State contains more than a seventh of the population of the Union, and our proportion of seven millions, would be an annual quota of one million. But if three millions five hundred thousand dollars only should be distributed, our proportion would be the interest at five per cent. of ten millions of dollars, and would support our credit for internal improvements to a large amount. This sum would be an indirect tax of twenty-five cents upon each individual in the state, paid by those who consume foreign productions.

I am aware, that in recommending, as I earnestly do, a cautious policy with regard to public expenditures, I point you to a path that leads rather to useful results, than to personal glory; but all of us must be deeply impressed with the truth, that a democratic government can be sustained only by public virtue. The patriot will discard all selfish considerations, and in the execution of his trusts, will suffer the happiness and prosperity of his country to take entire possession of his heart. It is a paramount duty to all the functionaries of the government, to keep the people advised of everything which affects their interests; and on all occasions to endeavor to infuse a spirit of public morality. That species of legislation which is the result of an alliance between private interests and the excited feelings of the community, bearing with it the co-operation of the timid, and reaching by indirection a common object, is immoral, dangerous, and may ultimately bring ruin upon the country. Those who have designs either of private interest or ambition, will strive to keep the public eye fixed in another direction, while they march to the accomplishment of their purposes unobserved. I am persuaded, that if we are destined to be ruined by legislation, it will not be by means of the comparatively trivial sums which may be supposed necessary to defray the ordinary expenses; not even by the wasteful expenditure of accumulated treasures; but by the allurements of the glory of splendid undertakings, and the legislative power over public credit.

The canal debt amounted on the first day of January instant, to $7,825,035, composed of the following items:

Erie and Champlain canal stock, payable 1837, 6 per cent.....	$2,943,500	
Do 5 per cent. payable 1837, and 1845.....	4,057.535	
		$7,001,035

Oswego 5 per cent. in 1846 and 1849	$437,000	
Cayuga and Seneca 5 per cent. in 1849	237,000	
Chemung 5 per cent. in 1850	150,000	
		$824,000
		$7,825,035
The tolls received upon the Erie and Champlain canals during the past year, will amount to about the sum of		$1,027,327
The receipts from auction duties for the year ending 30th Sept. last		180,513
From salt duties till 31st October last		154,332
From other sources		40,403
Making the proceeds of canal revenue for the year		$1,402,575
Of this sum there has been expended by the commissioners, superintendents, collectors and other canal officers, about	$249,056	
For interest of debt	379,695	
		628,751
Leaving of the receipts of the last year to be applied towards the payment of the Erie and Champlain canal debt		$773,824
The sum accumulated from receipts of former years amounts to		878,176
Making the sum applicable to the extinguishment of the principal of that debt.		$1,652,000

CAYUGA AND SENECA CANAL.

The expenses of superintendence and collection for the last year, with the expenditures of the canal commissioners, as far as can now be ascertained, will amount to about	$13,085	
For interest upon the debt.....	11,860	
		$24,945

OSWEGO CANAL.

Expenses of superintendence, &c...	$17,751	
Interest upon the debt	21,850	
		39,601
Making total annual expense		$64,546
The tolls received during the past year from the Cayuga and Seneca canal is about.....	$11,864	
Tolls and rents from surplus waters from Oswego canal	12,812	
		24,676
Leaving a balance of expenditures more than the receipts from the tolls of those two canals, of		$39,870
Of the amount of the above expenditures on account of the Oswego canal, $3,310 has been paid for damages. There has been received from the Oswego canal, for bonds and mortgages transferred to the Erie and Champlain canal fund		$30,268
For principal and interest of bonds for lands sold belonging to that fund		3,240
Making		$33,508

Of this sum $22,491 have been paid for the balance of expenditures due from this canal the last year, and the balance has been applied towards the deficit of the present year. This sum, being $11,017, deducted from the above balance of $39,870, leaves twenty-eight thousand seven hundred and ninety-three dollars, which was made by law chargeable upon the general fund, and has been in part paid from that source.[6]

There is no one of our public institutions of more importance, or which has better fulfilled public expectation, than that providing for instruction in common schools. The large fund, appropriated to that object, has produced a complete organization throughout the state; and although the system has had to encounter all the obstacles to a new enterprise of such magnitude in its operations and objects, yet it has been well seconded by public zeal and liberality. Its imperfections may receive some correction from legislation, yet more is to be hoped from individual exertions, to carry the design of the legislature into effect within the several districts.

There are nine thousand and sixty-two school districts in this state, and eight thousand six hundred and thirty have made returns according to the statute. One hundred and ninety new districts have been formed during the year, and the number which have made returns has increased three hundred and thirty-eight in the same period. There are in the districts from which reports have been received, four hundred ninety-seven thousand five hundred and three children between five and sixteen years of age, and four

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[6] Chapter 281, passed April 25, relative to the literature fund, Oswego canal fund, and the Erie and Champlain canal fund, and chapter 286, passed April 26, "for the improvement of the canal fund" contained details relative to transfers and exchanges of funds and stock, deposits in monied institutions, accumulation of interest and other features of financial administration.

hundred ninety-nine thousand four hundred twenty-four scholars have been taught during the year in the common schools of the state; the general average of instruction having been about eight months. The returns show an increase of children between five and sixteen, compared with the preceding year, of twenty-four thousand one hundred ninety-four, and an increase of the number instructed, of nineteen thousand three hundred eighty-three scholars.

The public money apportioned among the several school districts during the past year, amounts to two hundred thirty-nine thousand seven hundred and thirteen dollars. Of this sum, one hundred thousand dollars was paid from the state treasury, and the residue was derived from a tax upon the several towns, and from local funds possessed by some of them. In addition to the public money, there has been paid to teachers by the inhabitants of the districts three hundred forty-six thousand eight hundred and seven dollars, making a total of five hundred eighty-six thousand five hundred and twenty dollars, paid for teachers' wages alone, in the common schools of the state.

The want of suitable school books, and uniformity in their use, and of competent teachers, seems to be the evils under which the system continues to labor. For the mere purpose of reading and arithmetic, selections may be made, among the various books extant, of such as are perfectly adapted to the purpose. But I feel confident that, under proper regulations, a vast amount of knowledge in the arts and sciences, connected with agriculture and handicraft, which are simple in their principles, and easily comprehended, might be taught to children during those years which are usually spent at common schools. For this purpose, suitable books should be provided, and such teachers only, as are competent to instruct from them, should be employed. I am happy to perceive that gentlemen, abundantly competent to throw light upon this subject, are moving to

consult each other, and to devise remedies for the existing evils.[7]

The public attention seems to be awakened to the subject of education in all the departments of knowledge, from that which simply makes the possessor familiar with his duties as a citizen, up to those which enable him to draw from the arcana of nature her treasures, or to contend in full panoply where honors are to be won for himself and his country, in the lists of literary emulation. While knowledge, by its intimate connection with the harmonious action and durability of our political institutions, has secured for its advancement, the efforts of individual enterprise, it will undoubtedly receive from you due attention and patronage.

The success which continues to attend the operations of the two medical institutions which have been taken under the patronage of the State, is the highest tribute to the talents and perseverance of the professors who have them in charge. The number of students at the College of Physicians and Surgeons in the city of New York, is at this time about one hundred and seventy. The anatomical class is the largest which has assembled for years, and an increase of pupils in every course of instruction is confidently anticipated. It is matter of regret that this institution is laboring under pecuniary embarrassments, arising from causes of somewhat remote origin, which threaten, if not removed, materially to affect its future prosperity. The College of Physicians and Surgeons of the Western District, has opened the present season with a class of one hundred and seventy-eight students.

In my last message, I gave a minute account of the structure, discipline, and condition of our state prisons. A brief notice of them only, is now necessary.

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[7] Chapter 44, passed February 17, prohibited a change of school house sites, except with the consent of the school commissioner and a vote of the people of the district. Several educational institutions were incorporated, and other statutes were passed relative to educational matters.

The prison at Auburn contains five hundred and fifty cells, in its north wing, and had, on the seventh day of December last, six hundred and sixteen convicts. Of the sixty-six surplus convicts, twenty-five are females, and confined in one room; the residue are lodged in large rooms, under great disadvantages in the south wing. In the exercise of a power conferred upon the Executive by law, I directed, during the month of February last, the sheriffs of the counties of Herkimer, Oneida, Otsego, Chenango and Broome, to convey their convicts in future to the prison at Sing Sing, instead of Auburn. Since that time, the number at Auburn has declined from about six hundred and fifty to the present number.

The prison at Sing Sing contains eight hundred cells, and had, on the twenty-fourth of December last, eight hundred and six prisoners, having increased two hundred and twenty-eight during the last year. Of these, one hundred and fourteen have been received from the city of New York alone. Finding that the accommodations for prisoners were likely to be insufficient for the probable increase, I recommended, by special message, at the last session, the immediate construction of two hundred cells at Sing Sing, and ten thousand dollars were appropriated for that purpose. These cells, from causes not anticipated, have not been built, but I am informed that they are now in progress. It is evident that our prisons must be enlarged without delay. The reports of the officers of the prisons will put you in possession of all the facts necessary to enable you to act on the subject.

The condition of the female convicts is a serious evil; and I feel it my duty to press earnestly upon your attention the subject of a separate penitentiary for them, constructed with single dormitories, where they will be subjected to the discipline which has been so efficacious in the good government of our prisons, and to some extent in reforming male convicts. The whole number of female con-

victs now supported by the state at Auburn, and at the penitentiary in the city of New York, is sixty-three. Humanity, and I believe good economy, require that this subject should be no longer neglected. A separate building in the neighborhood of Sing Sing might be cheaply erected out of the materials at hand, by the labor of the convicts, and the female convicts might be placed in it, under the government of the officers of that prison.

I am not able to state the amount of the earnings of the convicts at Sing Sing, nor to compare it with the expenses for their support. But I learn from the agent of the Auburn prison, that he will not find it necessary to apply for any appropriation from the treasury.

The expenditures for that prison, during the year ending on the thirty-first day of October last, including the extra expense of building one hundred feet of workshops, repairs of the north wing which was damaged by fire, and all the necessary repairs in and about the prison, amounted to thirty-six thousand two hundred and twenty-six dollars. The earnings of the convicts during the same time, amounted to forty thousand three hundred and forty-one dollars.

I have pardoned from the state prison during the past year, seventy-six convicts. A great proportion of them are persons to whom my attention was called by the officers of the respective prisons, and who were commended to executive clemency by their youth, or long sentences, particularly those for life, on account of trifling burglaries. I found them enduring punishments incompatible with the mitigated severity of our criminal laws.

Farther reflection and experience confirm me in the opinion that punishment by imprisonment for life, should be rarely inflicted, except where a previous term of imprisonment has failed to produce reform. Punishment loses part of its terrors, if the convict may look with hope to the executive power for a pardon, on the facts alone upon

which the judges pronounced the sentence of the law. All reflecting men agree in the opinion, that certainty is more efficacious in producing reform, than severity of punishment.

There have been three convictions for capital crimes during the year, and one execution. I felt it my duty, on examining the testimony, to commute the punishment of one (a female) to three years imprisonment, and the other to imprisonment for life in the state prison.

While I renew the suggestion, that the punishment by death for arson is incompatible with the philanthropy of the age, I am impelled to add, waiving the question in casuistry, whether it is proper in any case to take life, that the punishment of death in all cases of mere technical murder is unreasonably severe. I have adhered to a sense of duty in refusing to stay execution, in every case of clear murder within the existing laws; while I have sometimes felt that the measure of punishment was disproportionately severe for the crime. I think that a portion of your time might be well employed in the inquiry whether the crime of murder cannot be so defined, or the punishment for the minor species of it so modified, as to limit the punishment of death to cases of actual premeditated homicide.[8]

The result of inquiries which have been made in Europe confirms the deductions of reason, that the higher crimes are lessened as men become more civilized and enlightened; and that though offences against property may increase, crimes against the person are invariably diminished. It would be productive of much good, if measures should be adopted for taking the statistics of crime within this state. Interesting tables might be formed, which would enable us to institute a comparison with other countries, and to determine how far the commission of crime is influenced by the nature of our government, by the intelligence and

[8] As to the division of the crime of murder into degrees, see L. 1860, chap. 410, and 1862, chap. 197, and Penal Code, sections 183 and 184.

wealth diffused among our people, and by our mode and degree of punishments. We should be able also to compare year with year and have some data for regulating our criminal code, and producing a uniformity in sentences.

If justices of the peace, and other judicial peace officers, should be required by law to return annually to the county clerks' offices, an account of the number of warrants issued, of accused examined, and of supposed culprits committed; and courts of special sessions, the number of persons acquitted and convicted before them; and other courts, the number indicted, acquitted and convicted, together with the nature of the offences and the punishments inflicted, the returns of the several county clerks would enable the Secretary of State to present a full and perfect view of that subject.[9]

I recommend also to your consideration the condition of our county prisons, under the conviction that great evils exist in our arrangements there; and in the hope that you will devise some remedy for the spreading of vice in those common receptacles of the suspected and convicted, the young and the old, the adept and the novice in crime. Those sentenced to punishment should be compelled to perform some useful labor, and the accused should have an opportunity to keep themselves employed.

The House of Refuge in the city of New York, as a penitentiary which operates at the root, is instrumental in the prevention of crime, and as having been patronized by the State, is deserving of notice. The building will accommodate two hundred and fifty-two boys, and sixty-eight girls, with separate cells; and has corresponding arrangements for the convenience of its government, the instruction of its inmates, and the care of the sick. There are now in the house one hundred and thirty-seven boys, and forty-four girls, nearly all of whom are in a course of instruction

[9] In 1839, by chapter 259, provision was made for obtaining criminal statistics.

in trades. The funds provided by the government are ample for all the purposes of the institution.

During the last fall, I visited the quarantine establishment at Staten Island, under the management of the health officers for the city of New York. While there, I sanctioned the erection of permanent buildings for a farm and washhouse, and other necessary works and repairs about the dock. They have all been finished, at an expense of about eight thousand five hundred dollars. The establishment is now complete, every edifice is durable, and the whole presents an appearance of cleanliness and order, which reflects great credit upon the officers who have it in charge.

A larger amount of money has been received at that establishment during the last year, than in any former year. Its receipts have been sufficient to pay all debts, make the necessary buildings and repairs, pay the annuity to the House of Refuge, and enable the commissioners to pay over to the Comptroller a surplus of about three thousand dollars towards a mariners' fund. It is not probable that hereafter the average annual surplus will equal that of the last year; and it will consequently require a long time to accumulate, by these small means, a sufficient capital to yield a revenue large enough to do much good. It is perhaps worthy of consideration, whether it would not be more just towards those from whom this fund is derived, to employ the annual surplus in relieving the wants of sailors during the winter season. They could be provided for at the New York hospital, or at the establishment at Staten Island.[10]

Our laws relative to imprisonment for debt should be carefully examined, for the purpose of amendment. The

[10] Chapter 234, passed April 22, 1831, provided for a Seaman's Retreat, to be established either in the county of New York, Richmond or Kings, and to be maintained from funds derived from sums levied and collected by law upon masters, mates, mariners and seamen arriving at the city and port of New York.

notion of imprisonment in the nature of punishment for debt, is repugnant to humanity, and condemned by wisdom. Among the early Romans, the unfortunate debtor and his family became the slaves of his creditor; and the hoary veteran has exhibited the bleeding traces of his master's scourge, mingled with the scars of honorable wounds received while commanding in his country's service. This extreme barbarity was discontinued at an early period; yet the principle of punishment for debt, by depriving the debtor of his liberty, was retained by that nation through its subsequent period of refinement, and has been transmitted to this day through all the enlightened governments of Europe. This trait of barbarism, notwithstanding all our reforms, still retains its place in our statute book.

Imprisonment for debt should be tolerated so far only as it is necessary to enable the creditor to secure the property of his debtor. In respect to debts of large amount, ample provisions, beyond the reach of the smaller debtor, seem to have been made; for it is provided that whenever a person considers himself insolvent, he may, on application to a proper officer, and due notice to his creditors, assign over all his property, and obtain exemption from arrest or imprisonment.

With such ample provision before us for the relief of those oppressed with large debts, the injustice of the provisions of the law in regard to the more helpless class, the extremely poor, is very striking. Imprisonment appears to be wanton when inflicted upon a person without means to pay, and who depends upon his daily labor for the maintenance of his family. A defendant in execution from a justices' court, must in some cases remain in prison thirty days, in others sixty days, before he is permitted to make oath, that he has no means for the payment of his debt. It is this which fills our gaols. An easy remedy may be prescribed, by permitting a defendant on the trial when his creditor is present, to show his inability to pay, assign over

his property, and thereby exempt himself from imprisonment. This subject I hope will engage your early attention, and while you make ample provision for the security of creditors against frauds, and to punish fraudulent debtors criminally, that you will so modify the laws, as to dispense as far as practicable, with imprisonment for debt.[11]

The returns of the militia show an effective force of about one hundred and ninety thousand men. It is probable, that these returns are somewhat defective, and if complete would exhibit a force of more than two hundred thousand. They are divided into the several corps of horse artillery, cavalry, artillery, riflemen and infantry. A well organized militia has always been esteemed by us, as the proper defence of a free nation, and has been cherished as an important part of the arrangement of our government. A standing army, although an indispensable safeguard of a government founded on assumptions, is always burdensome, and has too frequently been found as formidable to the people composing a nation, as to their enemies abroad. The power of organizing the militia is vested by the constitution in congress, and the existing laws of that body provide for their enrolment, equipment, discipline and inspection.[b] The laws passed on this subject by the state legislature are subordinate to, and must not contravene, the laws of congress. Some complaint has been made of the burden of compulsory militia service, and you may think it expedient to review the militia law for the purposes of equalizing the duties and relieving the service from any exactions which are not necessary for the accomplishment of the objects designed.

It is still a striking deficiency in our eleemosynary establishments, that suitable provision has not been made for the care, comfort, and restoration of the insane poor. That

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[11] Imprisonment for debt was abolished by chapter 300, passed April 26. Sections 1 and 2 were sustained in Frost v. Brisbin (1837), 19 Wend. 11.

[b] U. S. Const. art. 1, § 8, clause 16.

most destitute class of human beings, are unconscious of their own wants, and can make their appeal to our sympathies through the eye only, an organ conversant with external signs, but incapable of penetrating to the agony of the soul. Hence many of them roam neglected, and are even shunned as objects of dread. The ordinary poor-house provision is calculated rather to secure them from mischief, than to administer to their comfort. I hope that you will not be regardless of this call upon public duty and charity, and that some provision will be promptly made for their relief. I am informed that this matter has engaged the attention of a neighboring state, and that suitable provisions are there in progress.

The poorhouse system, so happily devised, and now in successful operation in most of the counties in the state, deserves your attention to its progressive improvement. The poor under that system are generally better provided for, and at much less expense than formerly. The report to be made by the secretary of state, will afford you such minute knowledge of the subject, as will enable you to act understandingly in correcting its defects, and enlarging the sphere of its useful action.[12]

Near the end of the month of June last, the superintendent of the salt works at Salina, had reason to suspect that frauds upon the revenue were practiced in carrying off salt, without paying the duties. He instituted inquiries, and as most of the salt was carried off by water, he examined the books of the canal collector at Salina. They disclosed the fact, that during the then month of June, about twenty-five thousand bushels of salt had been carried away, which was not entered in the books of the superin-

[12] Chapter 277, passed April 25, imposed a penalty for unlawfully changing the settlement of a poor person with the intent that he should become chargeable upon another locality. Superintendents of poorhouses were required to provide common school instruction for all paupers over five and under sixteen years of age in such poorhouses.

tendent or inspector. He then pursued the same examination back to the ninth day of June, 1828, the time when the collector's office was established at that place. It resulted in a discovery, that during the months of May and June, 1830, thirty-three thousand bushels, during the year 1829 ninety-seven thousand bushels, and in 1828 from the month of June thirty thousand bushels of salt had been carried off by water, without paying the duties. The amount taken away by land could not be ascertained, but it is supposed to be at least fifteen thousand bushels more, making in the whole one hundred and seventy-five thousand bushels; being a fraud upon the revenue to the amount of more than twenty-one thousand dollars. How long previous to the establishment of the collector's office, the practice of smuggling salt had been carried on, or to what extent, it is now impossible to ascertain. Independently of the loss to the revenue, the practice has materially prejudiced the honest dealer. It has been ascertained that these frauds were accomplished, by means of a combination between certain deputy inspectors, and dealers. Prosecutions are now pending against the transgressors.

The attention of the legislature to this subject is necessary for the purpose of taking measures to prevent the recurrence of similar evils. Laws imposing criminal punishments upon future guilty officers and dealers, ought to be passed, and the canal collectors at Salina, Syracuse, Montezuma and Oswego, may be made instrumental, by imposing certain duties upon them in preventing such frauds in future. Notwithstanding the depredations upon the revenue, the salt inspected during the year 1830, exceeds that of the year 1829, by about one hundred and forty-three thousand six hundred bushels.

There is another subject connected with our interesting establishment for manufacturing salt at Salina, to which I am desirous of directing your attention. A large capital has been invested, and a great many persons are employed

in the production of both coarse and fine salt. Coarse salt, weighing seventy-six pounds, and of a purity equal to any in the world, is sold at a price, which yields the manufacturer nine cents per statute bushel of fifty-six pounds, and fine salt is sold at six cents. Under the heavy state duties, both directly upon the article, and indirectly through canal tolls upon that transported to a distance, the dealers have pushed it into competition with the foreign article east, upon the Hudson river and northern canal, and west as far down the Ohio River, as Wheeling.

The law passed at the last session of congress reduced the duty upon foreign salt five cents, on the first day of the present month, and will reduce it five cents more on the first day of January next; making a reduction in the whole of ten cents, being one cent more than the value of coarse salt, at the manufactory. It is evident that the effect of this reduction will be to circumscribe our salt trade, and ruin many of those engaged in its production. It has been supposed, that the constitution, securing the duties without diminution to the canal fund, presents an insuperable obstacle to relief.[c] Yet a remedy by bounty or otherwise may be found, and the subject is of sufficient importance, both as it regards the persons concerned in the manufacture of a commodity of indispensable necessity, and as it concerns our revenue, to engage your earnest attention.

I have received an interesting report from the President of the Hudson and Delaware Canal, which I consider of sufficient importance to transmit to you herewith.

The State has an interest in the success of this canal, on account of the large loan, which it has made in aid of its operations. The report shows, that the company is likely to fulfill, not only its obligations, but also the expectations which it had created. This work is also interesting on account of its opening a new channel of trade, and intro-

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[c] Const. 1821, art. 7, § 10.

ducing through it to our markets an important article of necessary consumption.

Among the multifarious concerns of our state which will press themselves upon your notice, the great interests of agriculture, manufactures and commerce cannot fail to be kept constantly in view. While all your measures of general policy will have a bearing upon these primary interests, it will become you specially to consider how far you can, by measures directly bearing upon them, aid in multiplying their objects and resources, and thereby increase the wealth, happiness and prosperity of the State.

In pursuance of a resolution of the Legislature, during the last session, I issued instructions to the Commissary General to open a negotiation with the general government, for the settlement of the unliquidated ordnance account. He commenced a correspondence with the subordinate officers, who have heretofore been charged with that matter, which produced no result, for want of proper authority on their part. He afterwards brought the subject directly to the notice of the Secretary of War, who has recently empowered an agent to attend to it, and it is hoped that a favorable result will be produced, without incurring the expense of an attendance at the seat of government.

I transmit herewith a report from the Attorney-General relative to the suits, on the claim of John Jacob Astor, and our controversy with New Jersey.

In the month of February last I concluded a treaty with the Orchard party of the Oneida Indians, by which they ceded to this State one thousand acres of their land. During the last summer the Agent of the State accompanied about one hundred and twenty of this party, and about one hundred of the first Christian party of Oneida Indians to their lands near Green Bay. I have received from the highest sources, information that the Oneida Indians who have removed to that place, are very much improved in their condition. They evince an industry, providence and sobriety, which have stamped a new character upon them.

The act for the employment of Special Counsel, to prosecute the abductors of William Morgan, will expire by its own limitation, on the first day of May next, and it will be your duty to determine upon the propriety of its further continuance. It is much to be regretted, that the ample provisions, heretofore made by special statutes, to punish the actors in this conspiracy, have not produced results as favorable to the cause of vindicatory justice, as all well wishers to good order have desired. Money has been placed at the discretionary disposal of the officer intrusted with the prosecutions, and has been liberally expended by him. No item which he has certified to be necessary, has been rejected by the accounting officer; and no justifiable aid, within the constitutional power of the Executive, during my administration, has been withheld. It is but justice to myself to say, that in all cases where the Executive arm was necessary to reach fugitives, who had taken shelter from the ordinary process of our courts within the jurisdiction of other states,[d] it has been stretched out for that purpose: and that where, from accidental causes, courts were like to fail for want of presiding officers, my exertions have always been unremitted and uniformly successful to sustain them. The statute of limitations closed upon the misdemeanors growing out of this outrage, in September 1829. The judge of the Eighth Circuit informed me, that he should resign at a certain period, whereby the opportunity to present indictments in the counties of Niagara and Monroe, before they should be barred, would be lost. I commenced an active correspondence with the judges of the supreme court, and judges of the other circuits, who were then busied in holding courts within their respective districts, and finally made arrangements, by means of which courts in both those counties were held in season, and a sufficient time, to enable the public prosecutor to present all the indictments which he was prepared to sustain.

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[d] U. S. Const. art. 4, § 2, clause 2.

The great number of indictments pending in the county of Niagara, was supposed to present a good reason for the appointment of a special circuit court, in the hope, among other considerations, that all the prosecutions might be disposed of, so as to quiet the public mind, and put a stop to the large annual expenses incurred by unnecessary procrastination. A law was accordingly passed, at the last session, directing a court to be held by one of the justices of the supreme court, on the first Monday of June last, a period sufficiently distant from the time of passing the act, to enable the special counsel, then familiarly acquainted with the subject, and in the possession of all the information, and of a knowledge of all the witnesses, to prepare the causes for trial. I was surprised by receiving in the month of May the resignation of the special counsel; an incident of which I had no previous intimation. I corresponded immediately with counsel, by me thought qualified to discharge those important duties upon an emergency, and succeeded eventually, in inducing Mr. Birdseye, of Onondaga, a gentleman of respectable talents, and long experience in criminal prosecutions, to accept the trust. In the meantime, I directed the late special counsel to deliver over to the district attorney of Niagara county, all the papers and information in his possession, and requested the district attorney to proceed in preparing the causes for the court. Deeming it my duty to omit no proper measures for the vigorous prosecution of the trials, I also employed Bowen Whiting, esquire, the district attorney of the county of Ontario, who had been the prosecutor of the conspirators in the latter county, to aid Mr. Birdseye in the prosecution, and promised to recommend him to the Legislature for a suitable compensation. As no provision has been made, by law, for the employment of additional counsel, and the exigency arising from the then recent resignation of the special counsel, and which could not have been anticipated by the Legislature, made such aid, in my

my opinion necessary, I do therefore recommend, that provision be made to compensate Mr. Whiting for his services. The report of Mr. Birdseye is transmitted herewith.[13]

I am conscious that I shall meet with a response in your feelings, while I commend to your friendly aid, those surviving officers and privates of the revolutionary war, who have not yet partaken of the bounty, or shared in the justice of the government. I allude to those who engaged in the struggle for independence, at an early stage of the war, stimulated by an ardent patriotism, without any promise of reward, and have therefore not yet been deemed proper objects of remuneration. Their services are certainly not the less meritorious, because they were disinterested. Many of them have lingered to this day with disease and penury, in consequence of their early sacrifices in the common cause. I trust that you will add your earnest expressions to the efforts which will be made by others, to procure from the National Government, a suitable provision for their old age, out of our now exuberant treasury.

Highly favored as we are by climate, and an exemption from those direful diseases and terrific convulsions of nature which shorten life, or render its continuance wretched, in otherwise genial climates and fruitful regions, we are no less so by soil and mineral treasures, which yield generous returns to the hand of labor. Our wilderness, penetrated by the hardy and enterprising adventurer, and in latter times intersected by channels of intercourse, accomplished by the resources and wise policy of an enlightened government, has given place to highly cultivated fields and blooming gardens, manufacturing towns, villages and cities. But a few years have elapsed, since we were dependent upon foreign skill and industry for nearly all of our fabricated

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[13] Chapter 8, passed January 25, directed a special circuit court and court of oyer and terminer to be held in the county of Niagara on the third Monday of February, 1831. The appropriation act, chapter 323, made provision for the compensation of Bowen Whiting. See special message of April 23.

necessaries; but now, the manufacturer has almost imperceptibly set himself down by the side of the agriculturist, and we are beginning to be able to supply ourselves with all the wrought articles indispensable to our comfort, from the American workshops.

While our population is rapidly increasing in the country, and wealth diffusing itself in a manner which shows the even bearing of our political institutions upon individual rights, our great commercial city, which connects our interests by its trade with foreign countries, exhibits a population augmented in a ratio beyond all former example. An increasing attention is paid by enlightened and humane individuals, to the intellectual and moral improvement of the rising generation. And above all, we enjoy a freedom of action and of conscience in everything which is the birthright of man, so far as it is compatible with the salutary restraints of government.

Let it not, then, be said of us, that where wealth and freedom reign, contentment fails; but let us turn our eyes and thankful hearts to the benevolent Author of all good, and beseech him to guide, by his infinite wisdom, our counsels, so that we may continue in his favor, and in the enjoyment of all our blessings.

ENOS T. THROOP.

Albany, January 4, 1831.

SPECIAL MESSAGES.

January 6. To the Assembly: Transmitting a resolution adopted by the Legislature of Connecticut disapproving the Missouri proposition to provide for a uniform plan of electing the president and vice-president, by a direct vote of the people without the intervention of presidential electors, and depriving the house of representatives of the power to determine the choice of president and vice-president in any case.

Also two resolutions adopted by the Legislature of Vermont, one disapproving the Georgia proposition, which was also the Missouri proposition relative to the election of president and vice-president, and the power of the house of representatives in such a case and the other disapproving the Louisiana proposition extending the term of president and vice-president, and making the president ineligible to reelection.

Also a resolution adopted by the Legislature of Mississippi disapproving the Missouri proposition adopted January 23, 1829.

Also resolutions adopted by the Legislature of Louisiana disapproving the Mississippi resolution as to the validity and constitutionality of the tariff act of 1828, and approving the Vermont resolution on that subject especially declaring the tariff act to be "harmless to the southern states."

January 6. To the Assembly: Transmitting the annual report of the Adjutant General.

January 11. To the Assembly: Transmitting the annual report of the Inspector General of Staves and Heading, in which that officer recommended certain changes in the law relative to the subject under his jurisdiction. See Assembly Documents, 1831, No. 9.

January 18 and 19. To the Assembly and Senate respectively:

"GENTLEMEN.—I have received official notice, that the special circuit court, and court of oyer and terminer, in the county of Niagara, which was adjourned over to the first Monday in January instant, has ceased. It was intended to have had that court adjourned until the second Monday in February next, when one of the justices of the supreme court would be at leisure to hold it, according to the design of the Legislature: and an arrangement had been made with Judge Marcy to that effect. The letter of the special Counsel addressed to me, accompanied by the

letter which he received from Judge Gardiner, transmitted to you herewith, will explain the causes of the failure. The motives which induced the Legislature originally to provide for a special court, still exist with unabated force, and there is now superadded to them, considerations of public interest, arising from preparations for the court which was expected to be held on the second Monday in February. The existing laws, do not, in my opinion, confer sufficient power upon the supreme court to meet the necessities of the case.

I do therefore recommend that a law be passed, reviving the provisions of the act of April 17, 1830, so far as to enable the court to be held on the second Monday of February next, and to be continued by adjournment. The manifest propriety of giving time for both parties to prepare for trial, will, I trust, induce the Legislature to act in this matter without delay. [See note 13.]

E. T. THROOP."

Albany, January 18, 1831.

See Assembly Documents, 1831, No. 39.

January 29. To the Assembly: Transmitting the annual report of the Commissary General.

January 31. To the Senate: Transmitting a communication from Justice Smith Thompson of the United States court relative to the trial of the Astor cases. See Senate Documents, 1831, No. 2 for Attorney General's report, and No. 24 for Justice Thompson's letter, and No. 28 for a further communication from the the Attorney General.

February 23. To the Assembly: Transmitting a communication from the agent of the General Government in charge of the Watervliet arsenal, requesting the privilege of taking water from the Erie canal for use at the arsenal. The agent said the government would construct and maintain all the necessary walls and bridges connected with the passage of the canal through the public grounds, as an

equivalent for the use of so much water as might be granted — not exceeding the quantity usually required to operate two pairs of five feet mill stones.[14]

March 2. To the Assembly: Transmitting a resolution adopted by the Legislature of Ohio declaring it "premature and inexpedient to express any opinion whether the appropriation of moneys by the general government in aid of the Colonization Society, be or be not constitutional."

March 11. To the Senate:

"GENTLEMEN.— I consider it my duty to lay before you the accompanying communication from the Attorney General, concerning our controversy with New Jersey. The matter to which it relates, derives much of its importance from the grounds assumed by the Judges of the Supreme Court of the United States, with regard to their powers; and I feel bound to present to you my views of the subject, as well as the course which I feel impelled by a regard to the interests and honor of the State to pursue, unless you shall think proper to give it a different direction.

You are apprised by the accompanying papers, and those which have preceded them, from the same source, of the several steps taken by the State of New Jersey, to compel our appearance before the national judiciary, to contest with her the question of sovereignty over a portion of the waters of the Hudson river.

It seems to be a mere question of sovereignty over the waters, inasmuch as New Jersey admits in her bill of complaint, that whatever right she may have had to the islands,

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[14] In response to the application for the privilege of using Erie canal water at the Watervliet arsenal, the legislature adopted a concurrent resolution providing that "the canal board make such arrangement with the authorized agent of the United States in relation to walls and a bridge along the canal, which passes through the lands of the United States at Gibbonsville, as shall be most conducive to the interest of this State, and as shall be consistent with the former arrangement between this state and the United States."

those rights have been lost by adverse possession and the lapse of time.

The Attorney General, with my sanction, has hitherto declined to appear in court and respond to the complaint, without intending any disrespect to that high tribunal, and in a manner which I trust precludes the imputation of such a motive. His refusal to appear was grounded upon the belief, that the court has not been invested with the power to take cognizance of original suits, where a State is made a defendant party. The reasons for this opinion are more fully detailed by the Attorney General, but may be succinctly stated as follows:

1. It was not designed by the Constitution to confer that power on the court, until Congress had legislated upon it, and declared *what* controversies between States were proper to be entertained by the court, and what should be the mode of proceeding. The Constitution is silent in regard to both of these matters. A strong argument in favor of this construction is afforded by that clause in the Constitution, which, after enumerating the powers of Congress, adds: 'To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and *all other powers* vested by the Constitution in the government of the United States, *or in any department or officer thereof.*'[e]

2. That Congress had passed no laws for these purposes.

In 1789, a judiciary act was passed, giving writs and other proceedings in all cases, other than those where a state was defendant. This was a practical construction of the constitution, and showed their opinion that legislation was necessary to enable the court to proceed. And by neglecting to provide specifically, for proceedings in controversies between states, they indicated their opinion that the time had not arrived when it would be proper for the

[e] U. S. Const. art. 1, § 8, clause 18.

court to entertain such suits. The meaning of Congress is most distinctly marked by the wording of the judiciary act. It grants to the court, the power to issue certain writs and further, 'all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law.'

Now, as no mode of proceeding, against a sovereign state, is known to the common law, it would seem to be a fair conclusion, that Congress designed, by precise and unequivocal language, to exclude an implication that the power to proceed against a state was granted by the act.

3. Although the court has frequently attempted to exercise this power, by entertaining writs against states, and summoning them to appear and answer, no state has ever obeyed their summons; thereby virtually denying the power of the court.

4. Several attempts have been made by states to prevail upon Congress, to pass laws for this object; but they have uniformly refused to vest this power in the court. Two of these attempts, made in 1822 and 1828, are detailed in the several reports of the Attorney General.

5. The state of New Jersey has, impliedly, admitted the want of power in the court, by her attempt to obtain the passage of the law in 1822, and by a proposition made through her commissioners, to the commissioners on the part of this State, in 1827, to submit this controversy to the Supreme Court, as an impartial tribunal to arbitrate between the parties.

Taking the foregoing view of the subject, I did not consider myself justified in permitting the State to be represented as a party defendant, before a tribunal which had no right to exercise authority over us, and which, I confidently hoped, would, on a review of its own powers, come to that conclusion.

But the matter has now assumed a new aspect. The opinion of that court shows, that they view the subject differently, or at least are disposed to assume the jurisdiction on an *ex parte* case.

The grounds upon which, it is supposed, that the court claims cognizance of the controversy, are:

1. That ample power is given to them by that clause of the constitution, which ordains that 'the judicial power shall extend to controversies between two or more states.'[f] That having the power, the means of exercising it are incidental, and that they may, by rules of court, prescribe the forms of proceeding.

2. That the proceedings in suits before that court, prescribed by statute, are applicable to cases where a state is defendant, and that therefore Congress has legislated on the subject; and,

3. That the decisions of that court have been uniform, in all cases which have come before it, and support the authority of the court.

We have now reached a point in the progress of this litigation, where the future action of the State should be determined upon with deliberation, and governed by a due sense of all the high responsibilities resting upon us, as citizens of the United States, and members of a corporate state sovereignty. This State can never forget that she is a member of the Union, and has a large stake in its perpetuity. While she will permit no encroachments on the part of the general government, she will put forth her strong arm, in time of need, to support it in the exercise of its acknowledged powers. If, on this occasion, she is compelled to differ with the national judiciary, I have no doubt, that she will do so firmly and dispassionately, and afford a becoming example of respect towards the tribunal deemed worthy, by the founders of our government, to be

[f] U. S. Const. art. 3, § 2, clause 1.

the depository of the power for preserving the peace of the Union.

It was undoubtedly a part of the design of our government to have a judicial tribunal to decide on all questions of conflicting rights, growing out of the limitations of the sovereignty of the States, and the specific delegations of power to the general government. And one of its special objects was to adjust amicably, all such differences as might arise between the States. The want of such a power, with sufficient energy to enforce its decisions, was one of the leading motives for proposing a Constitution.

Every worthy American must be penetrated with feelings of gratitude when he contemplates the beautiful structure of our government, and the wonderful harmony and adaptation of its parts. The people, although divided into several communities, are nevertheless, by their compact, bound together in fraternal relations, under a common head, with all the same social interests, duties and feelings, which belong to a consolidated nation. In its great outlines, human wisdom could not devise anything more perfect, to secure those who live under its protection, in the possession of their rights, and to defend them from the calamities attendant upon civil dissensions. It would have been essentially defective in its arrangements, if provision for the adjustment of disputes between the members of the confederacy had been omitted. An appeal to arms, which is the only means of redress by one nation for the wrongs committed upon it by another, is ill suited to the condition of the members of the same political family.

But in this part of the system, an inherent difficulty reminds us of the imperfection of all human works. Our government is based upon a written Constitution, which is the rule of conduct for all the constituted authorities. Legislative discretion finds its limits there. Who shall decide when its boundaries are transgressed? If this power had been placed in Congress, then not the Constitution, but

the will of that body, would be the fundamental law of the empire. It is in the nature of things, that there must be an irresponsible power, somewhere, and in the adjustment of the parts of our government, it was deemed essential to the uniformity of its action, to place it beyond the influence of those commotions, arising from popular errors, which indiscriminately destroy, and soon pass away. This power was, therefore, intended to be placed in judicial officers, rendered immovable, save for misconduct.

This body, being the ultimate tribunal from which no appeal lies, must necessarily decide, among other things, upon its own constitutional powers. The only relief from its errors rests in a resort to amendments of the Constitution, to an impeachment of the judges, and in cases of flagrant usurpations, to a refusal by the officers to execute its decrees, or a forcible resistance on the part of the State, which is sought to be subjected to its power.

While we deny to the Supreme Court the right to bring us before its judgment seat, we have no reason to believe that it designs to usurp authority over us, or that it will persist in enforcing a jurisdiction, when it is convinced of its error. Indeed the court seem to invite us to a discussion of their power, in the closing part of their opinion, where they say, that 'the question of proceeding to a final decree will be considered as not conclusively settled, until the cause shall come on to be heard in chief.'

However clear we may consider the question to be, that the court has no power, yet the only peaceful tribunal which has cognizance of the question has decided it provisionally against us, and it becomes a question of magnitude, whether we shall now assume an attitude of resistance, or whether we shall embrace the opportunity still presented to us, to debate the question.

It will be proper to inquire, in the first place, if any, and what rights of the State will be compromised by an appearance in court, to contest the jurisdiction, and ultimately to

try the merits of the dispute between the States. A resort to forcible resistance would be both unwise and unbecoming in the State, except on undisputed ground, and at the last point of forbearance.

It has been feared by some, that if we should appear in court, we should thereby waive our right to object to the jurisdiction in the subsequent progress of the cause. If a law of Congress be necessary to give effect to the Constitution, and the court takes no jurisdiction without it, then an appearance by the State waives nothing. Jurisdiction cannot be conferred by an act which does not extend it over all the States. The Constitution or the law, or both conjointly, may confer such a jurisdiction, but no State can bestow it either by implication or express consent. It is a rule of law, that the consent of a party does not give jurisdiction: a court takes no more power by virtue of it, than an unofficial person. The authority of a tribunal, created by the consent of the parties, is derived from the submission, and cannot be extended beyond its terms. Contending as we do, that the clause of the Constitution which declares, that the judicial power shall extend to controversies between States, is a dormant power, and does not attach to any tribunal until it is vivified by an act of Congress, our appearance, in compliance with a summons from the court, under a protest against its proceedings, will admit nothing.

But supposing that this position is untenable, and that the Constitution should be interpreted to mean to invest the court with a jurisdiction, which it is unable to execute, for want of process to bring the party into court; yet we have a right to contend, and I think we will be sustained by the court, and the enlightened sense of the American people, that the technical rules of law, so proper and expedient in ordinary causes between private parties, ought not to apply to a case so peculiar and momentous. This case is entirely anomalous, involving a great and fundamental question of right. It is to determine the limits of

power between a State sovereignty and an arm of the national government, beyond which there is no appeal, except to that which severs the bonds of the Union, and involves us in all the horrors of civil war. Such rights as we contend for are not to be controlled by technicalities, and cannot be waived by any implication. We have too much regard to the public peace; too much respect for the constituted authorities; too much interest in sustaining the National as well as State governments in their proper spheres, to put at defiance any branch of authority created by the Constitution, until argument and remonstrance are exhausted.

We have great confidence, that should the merits of the controversy between this State and New Jersey be examined, they will be found to rest with us. If this should be the result of an investigation before the court, it would quiet this hitherto vexatious dispute, which has so long disturbed our harmony with a sister State. If, however, a judgment should pass contrary to our expectations, and justice should not demand of us to cede the disputed territory, and we should still deny the authority of the tribunal, we should then be in as good a condition to resist the execution of the judgment, as if it had passed against us by default of appearance.

As the court has seen fit to select the Executive and Attorney General, as the proper persons to bring into their court, as the representatives of the State, I shall, unless otherwise directed by the Legislature, instruct the Attorney General to protest against any waiver of right by appearing, and to appear and contest the suit in its progress, to its final determination.

E. T. THROOP."

Albany, March 10, 1831.

See Senate Documents, 1831, No. 55, for papers accompanying the message.

March 18. To the Assembly: Transmitting a resolution adopted by the Legislature of Massachusetts recommending the enactment of a law by Congress "for the more perfect organization of the militia of the several states."

March 26. To the Senate: Transmitting the following preamble and resolutions adopted by the Legislature of Massachusetts:

"*Whereas,* certain late proceedings of the Government of Georgia are of a nature to create very serious apprehensions in the minds of the good people of the Union, respecting the integrity and permanence of our civil institutions: And,

Whereas, it is the right and duty of the State governments and of the people, while they carefully avoid any attempt to influence the courts of justice in any case that may be pending before them, to express their opinions with freedom upon the conduct of all their political agents, and upon the general condition of the country, whenever the occasion may appear to require: Therefore,

1. *Resolved,* by the Senate and House of Representatives, That the federal constitution, the laws of the United States made in pursuance thereof, and all treaties made under the authority of the United States, are the supreme law of the land, and that the judges in every State are bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.*

2. *Resolved,* That the judicial power of the United States extends to all cases in law and equity, arising under the constitution, the laws of the United States, and the treaties made under their authority;[s] and that no State can rightfully enjoin upon its executive officers to disregard or resist by force any process or mandate which may be served upon it in such cases in due form of law, by authority of the courts of the United States.

3. *Resolved,* That it is the duty of the President of the United States to take care that the constitution, the laws of

* U. S. Const. art. 6, clause 2.

s U. S. Const. art. 3, § 2, clause 1.

the United States and the treaties made under their authority, are faithfully executed, anything in the constitution, laws or acts of any State to the contrary notwithstanding.

4. *Resolved,* That the senators and representatives of the State of Massachusetts in Congress, be, and they are hereby requested and instructed to use all the means in their power to preserve inviolate the public faith of the country, and to sustain the rightful authority of the Government of the United States in all its departments."

April 23. To the Assembly: Transmitting a report by Victory Birdseye, dated April 21, 1831, relative to the Morgan matter, in which Mr. Birdseye had been appointed special counsel to succeed John C. Spencer. Mr. Birdseye's report included the statement concerning several trials in Niagara county and the result, from which it appears that some of the persons indicted had been acquitted, in other cases a jury had been discharged because unable to agree, and that a few cases had not been disposed of. The report also included the statement of proceedings in the counties of Genesee and Monroe. Summing up the general result of the investigation Mr. Birdseye said:

"These trials have developed more than had been before known of the true character and closing part of this dark conspiracy. The information thus elicited is sufficient, I trust, to satisfy the public mind as to the ultimate fate of Morgan; that he was taken into the Niagara River in the night, about the 19th of September, and there sunk. Yet the evidence, although apparently sufficient for all purposes of human belief, is not sufficient to establish, with legal certainty and according to adjudged cases, the murder of Morgan." [See note 13.]

April 26. The Legislature adjourned without day.

ENOS T. THROOP, Governor.

ANNUAL MESSAGE.

GENTLEMEN OF THE SENATE, AND OF THE ASSEMBLY.— In contemplating the occurrences of the past year, we cannot be too grateful to the Ruler of events for our condition, as contrasted with that of the people under other governments. While we are happy, in the enjoyment of peace and plenty, without restraint, under the mild influence of institutions of our own choice, and laws of our own enactment; they have been agitated with alarms, wasting themselves with internal or external warfare, and submitting to cruel sacrifices in their efforts to reform abuses, or to revolutionize their governments.

We, as men and as republicans, cannot be indifferent spectators of the struggles of liberty in any part of the globe, whether in the old or the new world, in classic Greece, heroic Poland, or along the shores of the Oronoke or La Plate. But for the wreck of Poland's hopes we have peculiar regrets. We cannot forget that her gallant sons, animated by the most disinterested love of liberty, and looking upon tyranny everywhere as the common enemy, encountered it in our army, and shed their blood in our defence. That generous and chivalrous nation, in this day of her adversity, is entitled to, and receives from us, fraternal sympathy.

The wealth, the trade, and the external pomp of a nation, do not always indicate a happy condition of the people who compose it. Through the perversions by man, of the blessings which a kind Providence designs for all his reasonable creatures, we sometimes witness the incongruity of great apparent national prosperity, while a large proportion of the population, deprived of every comfort, are absorbed in

the cares of procuring the means to sustain life. It is not so with us. Here national prosperity is the prosperity of every individual. Not a cent is contributed by way of tax, not a dollar is expended from the public coffers, which is not assented to by the people, and employed to enlarge their means of enjoyment. Yet, with all these advantages, gloomy patriots have presaged a speedy downfall of our government; and there have not been wanting others, who have employed themselves to convert such forebodings into history.

Some reflecting statesmen among us have entertained a distrust of the perpetuity of our free institutions, from the tendency of large masses of people to blind infatuation, and common errors of opinion; and others from the possibility of legislating our constitution into something different from its fair import; while a common infirmity of human nature disposes us to change our position, whatever may be its advantages.

The ancient democracies were composed of small communities, and from the first of the above causes, were of short duration. These examples, however, should give us no alarm, because we enjoy advantages for a durable republic, which were formerly unknown, in the superior intelligence of the great body of the people, and in the extension of our popular institutions so as to embrace a great nation. Nor should we anticipate uninterrupted quiet, for communities the most enlightened may occasionally be affected by the contagious frenzy of popular delusions, and push blindly forward to deeds of fatuity; yet in such, the clouds of passion soon pass away, and ill-founded or ill-directed excitements vanish in the neighborhood of their source.

In relation to the second source of distrust, questions arise which always have divided, as they always will divide, the political opinions of the people. Hitherto all attempts which have been made to give, by legislation, a permanent

enlargement to the provisions of the constitution, have, in the most unequivocal manner, been repelled by the people. Our present chief magistrate commended himself to the suffrages of his fellow citizens, by his ability, the patriotism of his personal sacrifices, and the soundness of his views on all these questions; and he owes their increasing affections, as well to the frank and fearless manner in which he has since avowed these opinions and acted upon them, as to the success, both at home and abroad, which has attended the measures of his administration.

The President's recent message to Congress presents a gratifying picture of our foreign relations and internal condition. We have nothing to fear from collision with any foreign power, and with some of the principal nations of Europe, our differences of long standing have been adjusted, and our intercourse is upon the footing of reciprocal good will. At home, industry is branching into new channels, and its productiveness is evinced in public enterprises for improving the internal condition of the States, and in a more general diffusion of individual wealth.

This state is so happily situated, from its geographical position, its fertile soil, its facilities for conducting manufacturing operations, its mineral treasures, and its great commercial city, that no general causes of prosperity can prevail, without a large share of their advantages being enjoyed by us.

The revenues derived to the general government from commerce are annually increasing, although our home industry has recently supplied our markets, wholly or in part, with many articles which formed a material proportion of our importations. Increase of revenue under such circumstances, affords another evidence of our prosperity, because the desire of enjoyment increases with the means of gratifying it; and so the amount of foreign trade is a proof of the wealth, as well as the wants of a nation.

The revenues are so abundant as to admit of no doubt that the national debt will be entirely paid off in the course of two years; indeed the President expresses his belief, that it may be extinguished during his present term of office. When this event occurs, it will be hailed with great joy by the people of this country, not so much on account of the burden which will have been removed, as by reason of its settling a political doctrine respecting debts contracted on legislative authority, by a precedent adverse to the theory which obtains under governments differently constituted.

Whatever may be thought of the fitness of borrowing money on the credit of the government, for its defence, or to prosecute great enterprises for the durable benefit of the country, no person can question the injustice of transmitting to those who come after us the burden of a heavy debt. No public debt should be created, but with ample provision for its liquidation within a reasonable time. It has never yet been determined by the representatives of a free people, what extent of moral obligation rests upon them to provide for the discharge of a debt, forwarded on for payment, by their predecessors in power.

The financial condition of our State is a source of congratulation. We have large funds secured for common schools and literary purposes; a large capital has been invested in internal improvements; and the State owes no debt except for the construction of its canals.

By a law of the last session, all the fiscal accounts of the State are to be closed on the thirtieth day of September, instead of the thirtieth day of November, as formerly established. The exhibit therefore for the present year will embrace the transactions of ten months only, and the sums given must be taken with that qualification.

The canal debt amounted on the first day of January, eighteen hundred and thirty-one, to seven millions, eight hundred and twenty-five thousand and thirty-five dollars. Nine thousand six hundred and fifty-three dollars of the

stock has been cancelled, and two hundred and forty thousand, two hundred and sixty-three dollars has been borrowed during the past year for continuing the works upon the Chemung and Crooked Lake canals, so that the debt on the first day of January instant, amounted to eight millions, fifty-five thousand, six hundred and forty-five dollars.

The receipts into the treasury, of revenue on account of the canal fund during the past year, to the thirtieth day of September last, are: on account of tolls, seven hundred and twenty-two thousand, eight hundred and ninety-six dollars; from other sources, three hundred and seven thousand and twelve dollars. These receipts, however, do not include the collections of tolls and salt duties for the month of September, as the arrangements with the depositing banks do not make these collections payable into the treasury, until the fifteenth day of October.

The expenditures for the same time, on account of interest, repairs, superintendence, &c. amount to the sum of five hundred and six thousand, eight hundred and sixty-six dollars; which, deducted from the receipts, leaves five hundred and twenty-three thousand and forty-five dollars, which has been added to the fund under the control of the Commissioners, applicable to the extinguishment of the canal debt.

This fund, amounting to two millions, two hundred and thirty-eight thousand, one hundred and ninety-eight dollars, and which deducted from the canal debt, leaves the balance of that incumbrance five millions, eight hundred and seventeen thousand four hundred and forty-seven dollars, is either vested in stocks or deposited in banks, at various rates of interest, from three and a half to five per cent.

It may be satisfactory to state, in addition to the operations of the fiscal year, that the whole amount of tolls received upon the canals up to the time of closing the navigation, is one million, two hundred and twenty-two thousand, four hundred and twenty-three dollars, of which twenty-eight thousand, nine hundred and eighty-eight dollars, were received from the Oswego and Cayuga and Seneca canals.

The nominal amount of the general fund, on the thirtieth day of September last, was one million, one hundred and thirty-one thousand, two hundred and twenty-one dollars; its real value is supposed to be eight hundred and five thousand, nine hundred and eighty-seven dollars. The estimated receipts from it, applicable to the expenses of the government for the ensuing year, is one hundred and twelve thousand and one hundred dollars. The estimated expenditures for the same time, is two hundred and sixty-nine thousand, nine hundred and sixty-seven dollars. The actual payments out of the treasury during the past year, up to the thirtieth day of September, for the ordinary expenses of the government, including the incidental appropriations of the last session of the Legislature, amounted to two hundred and sixty-five thousand, five hundred and two dollars.

The amount of expenditures above the actual receipts of revenue was paid out of the receipts into the treasury from the principal of the general fund, avails of the sales of escheated lands, and principal and interest of the school fund. The contributions from the last mentioned source will be refunded by a transfer of securities from the principal of the general fund.

Having in my former messages given a precise and full account of the condition of the treasury, it will not be necessary for me now to present the state of our finances more at large.

As the time is fast approaching when the means now at command to supply the disbursements of the government will be exhausted, and when new sources of revenue must be opened, I feel it my duty to keep you admonished of the fact, and to suggest such measures of relief as occur to my mind.[1]

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[1] The act for the support of the government, chapter 296, passed April 26, contained a provision authorizing the comptroller to transfer to the general fund, from time to time as might be needed, portions of the literature and

Our great and growing state, from its extent, population, and activity in commerce and the productive arts, will require for its ordinary expenses, and to cherish its various interests, a large annual expenditure of money. The common schools are now adequately provided for, and liberal appropriations have been made for the advancement of education in higher departments; but the time may come when the funds set apart for their use must be enlarged. The interests of learning will in various forms require both occasional and permanent aid from the government; crime must be punished, vice suppressed, and the helpless taken care of. The physical resources of the State must be developed by extending to sections which have never partaken of the public bounty, the benefits of the public enterprise. The iron regions of the north should be opened to their appropriate markets; and the southern and southwestern counties should, through their various practicable channels find outlets for their rich and valuable products.

It is, I conceive, one of the most imperative duties of a government to open, as far as it has the means to do so, consistently with other interests, all the important avenues for the trade of the State. The discharge of this duty should not be confided to private interests, with its direct as well as incidental power and influence, without necessity. We have already reaped much profit as well as glory in the construction of our two canals, along the main channels of the trade of the State. These enterprises were justified by plain indications, both of their utility and probable returns of profit, and the repayment of the debt was secured by an adequate appropriation from the public treasury.

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common school funds, and assign to these education funds bonds and mortgages or other securities belonging to the general fund, and notify the chancellor or Regents of the University, and the Superintendent of Common Schools accordingly. Provision was also made for redeeming parts of the stock of the Erie and Champlain canal funds as might be needed for the purpose of supplying the general fund.

I would not recommend a burden upon the people by way of tax, as heavy as that voluntarily assumed by our patriotic neighbors in Pennsylvania and Ohio; and I hope that by avoiding a large debt it will be unnecessary; but I propose to lay the foundation of a State fund to be sacredly appropriated to the purposes of internal improvements.

The means for the creation of a fund, and for revenue to defray the ordinary expenses of the government, are the residue of the general fund, the small remains of unappropriated land, the power of partial taxation, and of laying a general direct tax; the means in prospect are, the auction and salt duties, and tolls of our canals, when they shall be released from constitutional restrictions.

I had hoped that the people of the United States would see the justice and propriety of allowing the States to share in a fixed amount and permanent distribution of the surplus revenues; but the times seem unpropitious to measures for obtaining the necessary amendments of the constitution for that purpose. A hope is held out to us, that the public lands, or the proceeds of the sale of them, may be distributed among the States.

If we should be thrown upon the necessity of imposing a direct tax to raise revenue for any purpose connected with the public welfare, I have sufficient confidence in the patriotism and intelligence of our fellow citizens to believe, that they will cheerfully assent to its imposition. They have heretofore done so without a murmur, when the amount of the tax was larger, than, with prudent foresight, we shall ever again want. They will not, I feel assured, require their representatives to delay a resort to this measure, until the public interests have materially suffered.

Many wise and well meaning statesmen imagine, that the revenue from our canals, when the debt shall be paid, will be abundant for all the purposes for which revenue is wanted, and even that it will bear some additional burdens in advance. This is but hypothesis, and is to a certain extent fallacious.

Although the canal tolls are greatly increasing, it is doubted whether the Erie canal will remain the sole, or even the favored, channel for the trade of the west. I allude to projected works diverging from it, at various points, which, with the enterprise of our neighboring states, may compel us to establish a rival way upon its borders. The canal debt, though comparatively small, is intrinsically large, and the means of paying it should not be hazarded. There is but little probability that the annual expenses for repairs will ever be much less than at present. And reasons of public policy, may, in future times, exist to reduce the tolls, and thus materially diminish the revenue to be derived from them. If, however, the canal revenues should be carefully protected, and they should continue in their present flourishing condition, a very few years will place at the disposal of the State authorities, a large annual supply of money, to be employed for any useful purpose.

Among the improvements of the age, the science of road making, as being most intimately connected with our interests and our comfort, deserves to be mentioned. In governments of long standing, the most formidable impediments to good roads have been directly encountered, and works which astonish us by their magnitude, have been accomplished by the accumulated labor of ages.

The Roman roads were so permanently built, that portions of them have withstood the ravages of two thousand years. They were made as nearly level as possible, by cutting through mountains and filling up valleys; and their surface was made smooth and firm, by laying heavy hewn stone in a bed of mortar. The French have great highways, radiating in all directions from their capital city, built after the Roman manner. In Holland, and other parts of the Netherlands, roads are made by preparing a firm foundation on which brick are laid in mortar.

Railroads are of modern invention, more simple and less expensive than the Roman, French, or Dutch roads, and

probably better adapted to a cheap, safe and rapid transmission of persons and commodities. There is reason to believe that for great thoroughfares, they will not only supersede every other kind of road, but enter into a successful competition with canals also. They are not so well adapted to general use, as either roads or canals, because they will admit upon their track none but public vehicles of a peculiar construction.

The directors of the Liverpool and Manchester railroad in England say, in their report made last May, that they had been able to reduce the price of carrying goods one-third, and of passengers one-half; that the railway is peculiarly adapted to the conveyance of heavy and bulky articles, and that the conviction is now general, that traveling by the railway is the safest, as well as the cheapest and most expeditious.

The public papers have announced, that numerous applications will be made to you for charters to construct these roads in various parts of the State; and the questions will be presented for your decision, whether joint stock companies shall be created to make them, or whether this kind of improvement shall be no further extended. If it should be deemed expedient to progress in these works, then the embarrassing questions will arise, how many shall be made, under what restrictions, and what routes shall be selected.

It is very obvious that a long period must elapse; that this generation and many others, and even centuries, will pass away, before all those improvements which are worthy of the enterprise of the government, and which in time will be wrought, can be undertaken upon the public means alone. Shall we then forbear to possess ourselves of these advantages, if they can be obtained without imposing public burthens? Charters create monopolies, which are odious to a certain extent, and ought not to be granted, except to accomplish some great public good which cannot be effected without them. The good to be effected, as well as the im-

possibility of attaining it through other means than private interest, is manifest; and I trust that some of the most meritorious of these applications will receive your sanction, with proper reservations. By inserting the clause, now so common in charters, saving to the Legislature the power to alter, modify and repeal them; and by reserving to the State the right tc take possession of them as public property at pleasure, on equitable terms, charters for railroads may become eminently promotive of the public good, and I do not hesitate to recommend them as worthy of your profound consideration.[2]

In lending a favorable ear to those projected improvements upon routes contiguous to, and intersecting our canals, or pointing to the sources of their trade, the Legislature should be extremely careful to do nothing which may interfere with the canal revenues, or retard the payment of the debt. It is supposed that companies may be formed to take charters for railroads upon the most important routes, with the condition of paying into the public treasury such rates of toll, that no loss of revenue will result from their interference with the business of our canals.

In reviewing the condition of our State, I am irresistibly impelled to notice the condition of our public highways; and in doing so, I aim at an object beyond your immediate legislation.

Our road tax is now generally looked upon as a burthen, and is worked out with as little fidelity in labor, or regard to time, as the laws and indulgent overseers will permit. Although we sometimes witness operations in repairing highways conducted with skill, and evincing a laudable neighborhood pride; yet in most places they are managed without system, so that of the work of one year, scarcely anything of value remains for the next. If our farmers, in whose hands these roads generally are, could be persuaded

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2 See *post*, p. 396, for an Assembly committee's report on railroads.

that a reasonable assessment, faithfully and judiciously worked out upon their roads, would be more profitable to them than the same amount of labor upon their farms; and that it would enable them to carry much larger loads, in less time, with less injury to carriages and horses, to their next market town, and thus raise the value of their produce, we might expect to see an active spirit abroad to produce a reform in this particular. In the course of time, I should hope a better system of road laws would be proposed, with the general assent of the community; for I am aware that no compulsory laws on this subject will be available, unless they have been previously sanctioned by the public voice.[3]

The Secretary of State will present to you a full report of the condition of the common schools, and the operation of our poor laws.

On these subjects, I am not aware that any material legislation is necessary at this time. Both of the systems operate successfully; and from the public interest excited in their favor, and their intrinsic merits, such defects as shall be developed will not fail to be presented for correction to the proper tribunal.

The number of school districts and pupils instructed, have increased since the last year. There are nine thousand three hundred and sixteen school districts in the State, and eight thousand eight hundred and eighteen of them have made returns according to the statute. The returns show five hundred and eight thousand six hundred and fifty-seven children between the ages of five and sixteen years; and that five hundred and five thousand nine hundred and forty-three have been instructed in the schools from which returns have been received. The amount of money paid to teachers, derived from the public treasury, town taxes and funds, and voluntary contributions, is six

[3] By chapter 274, passed April 25, the inhabitants of a town were authorized to vote at town meeting a sum not exceeding $250 in addition to the sum already provided by law for the improvement of highways and bridges.

hundred and five thousand seven hundred and twenty-nine dollars.[4]

The county poor-house system has been voluntarily assumed by so many counties, that we are permitted to hope that no compulsory legislation will be necessary to ensure its universal adoption. It has had the effect of providing more effectually and comfortably for the needy, and of repressing idleness; and when in complete operation, it will save to the people of the State, in poor rates alone, an amount equal to one-half, and probably much more, of the ordinary expenses of administering the government.

May I not, in behalf of a class of beings, too powerless in all respects to lay their griefs before you, pray your early attention to their claims upon the paternal care of the State? Two years since, I called the attention of the Legislature to the condition of our insane poor. A committee of three highly intelligent members were appointed to collect information on that subject, during the recess of the Legislature, and to visit the hospitals for the insane, both in our own and the neighboring States. They made a report to the Legislature, at the last session, which embodies a vast amount of information upon a subject but little understood by the public, and presents powerful motives for legislative action. Recent discoveries show that insanity invariably proceeds from a disordered body; that it becomes incurable from neglect and harsh treatment; and that of recent cases, at least nine-tenths are dis-

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4 By chapter 299, passed April 26, the superintendent of common schools was required to procure and furnish to each of the school districts in the State, a copy of "Hall's Lectures on School Keeping," for the use of said districts.

Chapter 136, passed April 14, constituted the colored children of the village of Rochester a separate school, and the commissioners of common schools of the towns of Gates and Brighton were to be trustees of such colored school. This school was to receive an apportionment of public money in the same manner as an ordinary school district.

Chapter 142, passed April 14, incorporated the Rochester Institute of Practical Education to promote literary, scientific and industrial instruction.

charged from hospitals properly conducted, restored. These facts speak volumes of reproof to us, for having so long neglected the subject. With that report before them, and a recollection of what they must have seen and felt if they have ever looked into a maniac's cell in a county poor-house, I cannot believe that the members of the last Legislature refrained from establishing a system of relief for insane poor, on any other account than the want of time, and the pressure of accumulated business. I recommend the subject to you as worthy of your first care, in the hope that it will not be put aside for measures of less public importance, urged forward with the ardor of personal interests.[5]

There is another subject which deserves to be mentioned in connection with this: I allude to a penitentiary for females. The want of such an institution is an acknowledged evil; and the remedy for it has been frequently discussed in the Legislature, without coming to any result.

The female convicts belonging to the prison at Sing Sing are kept in a department of the alms-house in the city of New York, prepared for that purpose, at the great expense of one hundred dollars each. Their number was forty-nine on the 19th day of December last. The number of female convicts at Auburn was, on the 17th day of December last, twenty-nine, who, for want of other accommodations, are confined together in one room. Among them are some of the most profligate of their sex, mingled with others, who, under proper restraint and instruction, might be reclaimed. The keepers find it beyond their power to preserve order among them. On a late visit there, I noticed the decent de-

[5] An assembly committee presented a report on the care of the insane, noting among other things, conditions existing and results produced at the hospital in Hudson and also at the Bloomingdale hospital, called attention to the successful treatment of the insane at the hospital in Hartford, Connecticut, and said that a state hospital for the insane was in process of construction at Worcester in the state of Massachusetts. The committee introduced a bill to "establish the New York State Lunatic Asylum." No law was passed at this session, but in 1836, by chapter 82, provision was made for establishing a state lunatic asylum.

meanor of a female, whose sentence of death for murdering her husband, had been commuted by me to imprisonment for three years, under a belief that she had produced the death by inadvertence, and from representations that she was of good character, but ignorant. The keepers informed me that her conduct had been orderly, and that she submitted with patience and gratitude to what she considered punishment administered with justice and great mercy. This is an extreme case of an individual remaining unharmed by that contaminating association; but there is an intermediate class of partially depraved young persons, who cannot escape utter pollution.

While I renew the recommendation, that a separate penitentiary be provided for female convicts, I remain of the opinion that it should be built at Sing Sing, so as to be under the superintendence of the officers of that institution. There would be a great saving in the expense of building and managing such a prison at that place; and reasons of a moral nature should influence the choice of a site in the vicinity of the city of New York.

To improve the condition of the county prisons should be an ever present care of the representatives of the people. In their present condition they are a prolific source of crime. Those prisons should be so arranged and managed as to hinder their inmates from contaminating each other, and to prevent the growth of those parent vices, idleness, gambling and drunkenness. This subject should not be suffered to rest until a uniform improved system pervades our State.[6]

I need not urge upon you the importance of striking at the root of crime. Every successful measure of that tendency strengthens the bands of society, lessens the amount of human misery, and diminishes the expenses of govern-

[6] Chapter 333, passed June 22, 1832, required inspectors of county prisons and poor-houses to establish rules and regulations for the ventilation and purification of such institutions.

ment in regard to pauperism and crime. The age in which we live is distinguished by the many successful efforts which have been made to diminish the provocatives, as well as to correct the predisposition to vice. It may be hailed as the glorious epoch when public opinion has chained to narrow limits that devouring monster intemperance; and when untiring philanthropy has perfected a system of instruction which promises much for the general diffusion of knowledge, and its results, the love of virtue and liberty. A system of infant instruction, which was originally devised for charity scholars has been found so attractive to children, and so perfectly adapted, to their instruction in the rudiments of science, that teachers, initiated into all its mysteries, are establishing schools upon that plan, throughout the country, for the reception of pay scholars. Children are taken care of in these schools, at an age so very early, that it is of importance to mothers, who are compelled to labor, to place their infants in them.

I think it not improper to notice an interesting experiment now in progress in the village of Rochester, to combine mechanical labor with instruction in those sciences which appertain to a liberal education. The pupils rise at four o'clock, work three hours and study ten. I have looked over an account which has been kept with twenty students during the last quarter, and they are credited for earnings in coopering, joiner's work and printing, a sum amounting to a trifle short of all the charges against them. Mechanical alternates better with study, than agricultural labor. The institution was founded last spring; it numbers now sixty-one pupils, and bids fair to realize the expectations of its generous patrons.

Our higher seminaries of learning, as creations of legislative wisdom, deserve legislative patronage, that they may fulfill the object for which they were founded.

Our state prison discipline is continued with the same results which have given to the system its high reputation.

The two hundred cells, ordered to be built at Sing Sing, have been completed, and all of them will be soon occupied. That prison now contains one thousand cells, and nine hundred and sixty-three convicts were confined in them on the 19th day of December last.

Having been informed that there was a surplus number of convicts at that prison, and learning that they might be better accommodated at Auburn, I ordered sixty to be removed to the latter place, which was done early in the month of November last. I thought it expedient to adjust the matter thus between the prisons, both of which had a surplus, and not to alter the districts again, until the Legislature had signified its pleasure in regard to further appropriations for building. As now arranged, all the increase goes to Sing Sing; indeed the number at Auburn, exclusive of those received from Sing Sing, has declined twenty-nine since the first day of January, one thousand eight hundred and thirty-one. Since the same time, the increase at Sing Sing has been two hundred and forty.

If it is intended to persevere in a faithful experiment of our system, it is necessary that our prison room should be immediately enlarged. The number of male convicts at Auburn, on the 17th day of December last, including those received from Sing Sing, was six hundred and twenty-two. Of that number, five hundred and fifty are confined in single cells in the north wing, the rest are kept, two in a cell, in rooms prepared for them in the south wing. The south wing may be so altered, as to construct within it, upon the plan of the north wing, separate cells for as many convicts, as it will ever be thought proper to confine in that place. I recommend an appropriation for that purpose. It may be proper at the same time to enlarge the prison at Sing Sing. The reports of the inspectors of both prisons will, I hope, be sufficiently full to enable you to decide, at once, upon the subject.[7]

[7] 220 additional cells at the Auburn prison were authorized by chapter 277, passed April 25.

The earnings of the convicts, at Auburn, continue to amount to more than enough to defray the expenses of that institution; and I am informed by the agent at Sing Sing, that the prisoners at that place have earned during the last year, forty thousand dollars, besides building two hundred cells and one wing of a permanent stone shop, one hundred and fifty feet long, by thirty-six feet wide.

Our criminal code may be improved, by reducing the number of cases subject to capital punishment, and by enlarging the power of the courts to punish in some cases of peculiarly aggravated larcenies. The circumstances attending the late robbery of a bank in the city of New York show, that there are inducements for depredators to weigh, in advance, the value of expected booty against the power of the law to punish. This defect might be remedied by giving the court more discretion to punish for grand larceny, and by elevating in the scale of crime certain cases of burglary in the third degree.

Among the causes to which the increase of convicts in the state prison is to be attributed, a very principal one is the increase of state prison offences, introduced into the statutes, at the revision. The limited discretion of the court to punish misdemeanors, by imprisonment in the county prisons, operates, in my opinion, injuriously to the city of New York, where they have a penitentiary as well adapted to the ends of punishment and reform as either of our state prisons. It is worthy of consideration whether the laws should not be so amended as to diminish the number of state prison cases; and to vest in the courts, particularly in New York, the power to imprison for misdemeanors for such a period of time, as would produce a reasonable hope of amendment.

I renew the suggestion I made in my last message, that provision be made for taking the statistics of crime in this State. I am satisfied that proper returns would show, that

the apparent increase of convicts is owing to causes other than a disproportioned growth of crime.[8]

I have pardoned out of the state prison, during the last year seventy-three convicts. A great proportion of these cases were brought to my notice without the intervention of friends, for many of them had none; and their claims to pardon, in some cases became equitable, on account of the mitigated punishments for similar crimes, prescribed by the revision of the laws.

There have been four cases of conviction for capital crimes reported to me during the last year. In one of those cases I felt called upon by duty to arrest the execution; and I commuted the punishment to imprisonment in the State prison for seven years.

A law was passed at the last session to abolish imprisonment for debt; but its operation was suspended until the first day of March next, to enable the public to judge of its merits, and to afford an opportunity to make such alterations, as might be found necessary. The importance of that matter will induce you to give it an early consideration. The attainment of the desired object, with as little modification of the existing laws, and as few statutory provisions as possible, will be, undoubtedly, your aim. Brevity in laws leaves less to the discretion of the court, and brings them nearer to the common understanding.

A resolution passed both houses of the last Legislature to alter the constitution[a] so as to admit a reduction of the duty on salt manufactured within this State to six cents a bushel. This will infringe upon no other interest, public or private, and is both just and politic. The Legislature will be enabled thereby, to relieve, when necessary, a branch of home industry, important to the country on account of the article, and to the government on the score of revenue. Those who have embarked their fortunes in a business

[8] See *ante*, p. 342, note 9, as to criminal statistics.

[a] Const. 1821, art. 7, § 10; Am. 1833.

which pays a duty of nearly double the value of the manufactured article, and who may be ruined by a change in the policy of our revenue laws, have a claim to be placed at least within the range of legislative discretion. I hope, therefore, that the resolution will receive your sanction, in order that it may be submitted to the people, at the next election, for their approbation as a proposed amendment of the constitution.[9]

The reports of the Adjutant General and Commissary General, which will be forwarded to you in due season, will present the military force of the State. The number of the militia, as near as it can now be ascertained, is one hundred and eighty-nine thousand. We have in our arsenals forty-eight thousand, five hundred and forty-seven muskets, two thousand, four hundred and nine rifles, and three hundred and forty pieces of ordnance. Of the latter, about two hundred and twenty pieces are mounted for field service, and distributed to artillery companies.

It is believed that some improvements in the militia system are necessary to make it conform to the changes which have taken place in the condition of the country, since it was put in operation, that the public may be relieved of a portion of the burden, consistently with all the objects which it was intended to secure. If, on examination it should appear to the legislature that the paramount powers of Congress over the subject, present an insuperable obstacle to the accomplishment of this object by state legislation, it will be worthy of consideration whether the Senators from this State ought not to be instructed to propose such amendments to the act of Congress, regulating the enrollment and organization of the militia, as may be necessary to secure the required relief.

[9] A resolution to amend the Constitution by permitting a reduction of the duties on salt to an amount not less than six cents per bushel was adopted at this session, to be submitted to the next legislature. The resolution was again adopted in 1833, submitted to the people at the general election in that year, and approved.

Our claims upon the national government, on the ordnance account, have not yet been adjusted; but I am assured that there is a probability of that matter being brought to a close during your present session.

Whatever will foster the great interests of agriculture, commerce and manufactures, cannot fail to engage your attention on that account. Although our former agricultural societies, from inherent defects, were speedily dissolved in most of the counties, yet they produced much good. I would recommend their revival by state authority, under an organization more simple, and therefore more durable. I should not advise the appropriation of any money out of the treasury, or the granting of power to raise any; and I very much doubt the policy of granting any rewards or prizes. The main object of an agricultural society should be, to bring farmers together once or twice a year, to receive and communicate information on the subject of their pursuits, and to exhibit the productions of their farms, their industry and their skill. Under its patronage, and subject to its government, well regulated fairs might be permitted to become permanently established.[10]

It is not forty years since cotton began to be cultivated in our southern states as an article of commerce, and sugar has been much more recently introduced; yet now they are the staple commodities of many of those states. Most articles of culture are said to flourish best near the northern margin of the zone of their growth; thus, the Sea Island cotton, transplanted from a more southern latitude, has attained to a length of staple, beauty and strength of fibre, in some of our southern States, which renders it an unrivalled article in market; and the sweet potato, indigenous under a tropical sun, where it expends itself in vines, becomes a valuable edible in a more northern situation, and flourishes well even in this climate. With such results be-

[10] The State Agricultural Society was incorporated by chapter 303, passed April 26.

fore us, we should not despair of seeing the vine, the mulberry, and various productions of our own and more southern latitudes which are not now raised, or for the cultivation of which feeble attempts are made, among the ordinary productions of our agricultural industry.[11]

The United States census having been completed, it will devolve upon you to reorganize the districts for electing representatives in Congress. I presume the ratio will be determined upon in season, to enable you to discharge that duty before your adjournment.[12]

Several communications, received from the respective Governors of the States of New Hampshire, Maine, Connecticut and Delaware, accompanied by reports and resolutions from the several Legislatures of their respective States, are transmitted to you herewith.[13]

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11 The Poughkeepsie Silk Company was incorporated by chapter 294, passed April 26, and its real estate, which was limited to 500 acres, was to be used only for silk culture and general husbandry.

12 By chapter 248, passed April 24, the election of representatives in Congress was postponed from the general election in 1832, to the general election in 1833, but the act was to be void if a new apportionment was made by Congress at the present session, and in that case the Governor was required to convene the legislature in extraordinary session before the 1st of September. The Congressional apportionment was made, and the extra session was convened on the 21st of June. At this session, chapter 334 was passed, June 29, dividing the state into 33 congressional districts. The state was entitled to 40 representatives. The city and county of New York, composing the 3d district, was given four members, and each of the following districts was entitled to elect two members, namely, the 8th, including the counties of Columbia, Greene and Schoharie; the 17th, Oneida and Oswego; the 22d, Cortland, Tompkins and Tioga; and the 23d, Onondaga and Madison.

13 The Connecticut resolutions asserted the authority of the federal judiciary, and protested against any action by any state which would tend to paralyze the influence of the judiciary, "as a manifestation of feelings unfriendly to the permanent interests of our common country."

The Maine resolutions protested against the exercise of power by the federal government in laying taxes, duties, imposts and excises for the purpose of raising money for internal improvements, expressed the opinion that the tariff ought to be so regulated that the receipts would not greatly exceed the expenditures of the government; and that any surplus should be equitably distributed among the states according to a ratio to be established by a constitutional amendment.

I respectfully commend to your patronage those survivors of the revolutionary war, however inconsiderable their services may have been in the army, who have not been provided for by the government. Among them are some whose sacrifices were great, and whose services, although of an unpretending nature, were of great importance to the country. To make liberal provision for their wants, is an act which would leave no regrets; and it should be our pride in this day of our prosperity, to cherish those venerable remnants of a by-gone heroic age. An early expression of your wishes in their behalf, may quicken the action of that body upon whom the obligation rests.[14]

Permit me, in conclusion, to assure you of my readiness to co-operate with you in all such measures as tend to strengthen our political institutions, to promote the honor and prosperity of the country, and to add to the happiness of our fellow-citizens.

E. T. THROOP.

Albany, January 3, 1832.

The New Hampshire resolution recommended congressional legislation for a more perfect organization of the state militia.

The Delaware resolutions concurred in the action taken by Pennsylvania, Louisiana and Vermont approving the tariff act of 1828; approved the proposed policy of using federal funds for internal improvements and the proposition to pension revolutionary soldiers; declared that the proceeds of public lands should be distributed among the states for purposes of education; and disapproved the Louisiana proposition to fix the term of president and vice-president at six years, and make the president ineligible to re-election, and also the Missouri proposition to provide a uniform plan for the election of the president and vice-president by a direct vote of the people, and prohibiting the House of Representatives from determining in any case the choice of president and vice-president.

[14] The Legislature adopted a concurrent resolution recommending that pensions be granted to all revolutionary soldiers who served three months, "whether of the regular army or of the militia, or whether of the line of the army or attached thereto as guides, expresses, boatmen, artificers or teamsters, or the widows of such persons."

SPECIAL MESSAGES.

January 19. To the Assembly: Transmitting the annual report of the Commissary General.

January 21. To the Assembly: Transmitting the annual report of the Adjutant General.

February 24 and 25. To the Assembly and Senate respectively:

"GENTLEMEN.—I transmit to you herewith, a communication from the Attorney General, relative to the litigation on the claims of John Jacob Astor to lands in Putnam county. It will be perceived by this communication, that three of the five suits which were ordered to be prosecuted to test the validity of the claim, have been terminated by final judgments in the Supreme Court of the United States, uniformly in favor of the plaintiff's claim.[15]

E. T. THROOP.

Albany, February 24, 1832.

[For the report see Assembly Document, 1832, No. 149, also Senate Document, No. 54.]

March 1. To the Assembly: Transmitting a report and a series of resolutions adopted by the Legislature of Massachusetts relative to the northeastern boundary of the United States. The report and the resolutions discussed at great length questions relating to the boundary which had been left unsettled by the treaty of peace between the United States and Great Britain in 1783. The document recited the facts that acting under the fifth article of the treaty of Ghent, commissioners on the part of the United States and of Great Britain respectively, had been appointed to agree if possible on a boundary line, but that

[15] Chapter 86, passed April 5, provided for a settlement of the claims of John Jacob Astor against the State, and chapter 212, passed April 21, provided for the survey of the boundary line between the counties of Putnam and Dutchess.

failing to agree the subject had, as provided by the treaty, been referred to a friendly sovereign for arbitration, and the King of the Netherlands had been selected as arbiter: that the arbiter had suggested a new boundary line not acceptable to Massachusetts and Maine, both of which states were interested in the question,— Maine as the State whose northeastern boundary would be directly affected, and Massachusetts as a proprietor of large tracts of land in the state of Maine; and that these states protested against the proposed boundary line, and denied the power of the federal government to establish such boundary without their consent. The Massachusetts resolutions set forth the claim of the two states, and asserted their rights by declaring, among other things:

"That the government of the United States possesses the constitutional right to ascertain and settle, by negotiation with foreign powers, arbitration, or otherwise, such parts of the boundary lines of the said States, as were left doubtful by the treaty of peace of 1783, but that the said government does not possess the constitutional right to alter, by negotiation with foreign powers, arbitration, or otherwise, the boundary lines of the said States, so far as the same were ascertained and settled by the said treaty, to the prejudice of the territorial or other rights of any State, without the consent of such State previously obtained."

"That the government of the United States has no constitutional right to cede any portion of the territory of the States composing the Union, to any foreign power, or to deprive any State of any land, or other property, without the consent of such State, previously obtained;[b] and that the adoption of the aforesaid new boundary line, recommended, as aforesaid, by the king of the Netherlands, without the consent, previously obtained, of the States of Massachusetts and Maine, would be a violation of the rights of jurisdiction and property, belonging respectively to the said States, and secured to them by the federal constitution; and that any act, purporting to have such effect, would be wholly null and void, and in no way obligatory upon the government or people of either of the said States."

[b] U. S. Const. art. 4, § 3, clause 1.

The resolutions also specifically declared that Massachusetts would not consent to the ratification by the federal government of the boundary line proposed by the King of the Netherlands.

March 1. To the Assembly: Transmitting a preamble and resolutions adopted by the legislature of Tennessee protesting against the action of Congress in "appropriating money out of the treasury of the United States to be expended upon the local objects of improvements within the several States, and in subscribing for stock under state incorporations;" and approving President Jackson's veto of the Lexington and Maysville turnpike road bill. Other resolutions recommended that the public lands belonging to the United States be sold as soon as practicable, and the proceeds be set apart as a permanent fund for the education of American children,—the fund to be distributed to states and territories according to such rates as may be deemed equitable and just.

The Governor also transmitted resolutions adopted by the legislature of Indiana approving the Delaware resolution, recommending that pensions be granted to all surviving revolutionary soldiers whether in the "continental line, state line or militia." Another Indiana resolution recommended federal legislation providing for a more perfect uniform organization of the militia.

March 1. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

March 27. To the Legislature: Transmitting papers relative to the adulteration of potash. [See Assembly Document, 1832, No. 260, and Senate Document, No. 94.]

April 23. To the Assembly:

"GENTLEMEN.—The accompanying papers show that the act of March 18th, 1830, directing a copy of Burr's map and atlas of this State to be sent to the several States in

the Union, has been duly executed. The answers of the Executives of several of the States manifest high gratification at the liberality and courtesy of this State, in forward ing to them a present so rich and acceptable.

E. T. THROOP."

Albany, April 21, 1832.

[See Assembly Document, No. 305.]

April 26. The Legislature adjourned without day.

EXTRAORDINARY SESSION.

June 21, 1832, the Legislature was convened in extraordinary session, pursuant to the following proclamation by the Governor:

PROCLAMATION,

By Enos T. Throop, Governor of the State of New York.

Whereas, by an act of Congress, passed the twenty-second day of the present month of May, the Representatives in the Congress of the United States, are apportioned among the several states according to the numbers which the several states are entitled to by the last census; whereby the act of the Legislature of this State, passed April 24, 1832, entitled 'An act altering the time of electing Representatives in the twenty-third Congress of the United States,' by a provision contained therein, is repealed, so far as it provides for a postponement of the next election of members of Congress; it has, therefore, become my duty to convene the Legislature of this State, that they may be enabled to provide for the election of the full number of Representatives in Congress to which this State is entitled by said apportionment. [See note 12.]

I do, therefore, and in compliance with the provisions of the above mentioned act of the Legislature of this State, require the members of the Senate and Assembly of this

State to convene, as a Legislature, at the Capitol in the city of Albany, on Thursday the 21st day of June next, at twelve o'clock, at noon.

Given under my hand and the privy seal of this State, at the city of Albany, the twenty-sixth day of May, in the year of our Lord, one thousand eight hundred and thirty-two.

[L. S.]

E. T. THROOP.

GOVERNOR'S MESSAGE.

FELLOW-CITIZENS OF THE SENATE AND OF THE ASSEMBLY.—At the opening of your last session, it was expected that the National Legislature would apportion among the States the representation in Congress, at a day so early as to enable you before your adjournment to divide the State into suitable election districts. Our hopes in this respect were not realized; and after a very laborious session, you adjourned, at the usual time, having previously provided by law for a contingent postponement of the next election, in case an apportionment should not be made. Since your adjournment, Congress has acted upon this subject, and fixed a ratio of representation in the popular branch of that body, by which our State is entitled to forty members, whereby the law postponing the election is annulled.

On the occurrence of this event, I have, in obedience to my constitutional duty, as well as in compliance with your expressed wishes, convened you at this time, that you might provide for the exercise by this State of its full voice in the councils of the nation. As this was my motive for calling you together at this unusual and uncomfortable season of the year, so it is the only business pertaining to your duties within my knowledge, now so urgent as to justify me in the exercise of this power. I am happy to be enabled to say this, and to express the belief that the public wants will not require of you to sacrifice your personal comforts and private interests to the duties of ordinary legislation, through a protracted session. [See note 12.]

There is one other subject, however, which I feel bound to present to your consideration, and which may be disposed of without materially interfering with your special business, or prolonging your session. I allude to the supposed approach, at a time of unusual health within our State, of the Asiatic Cholera; a direful disease, which, having spread desolation over a great part of Asia, has advanced with rapid strides through Europe, and is now supposed to have crossed the Atlantic and to be frightfully busied in the work of death among our Canadian neighbors. It is certain that a very malignant disease, in its type resembling the much dreaded cholera, is ravaging the hordes of squalid emigrants which have been recently disgorged from transport ships near our borders, and has been communicated from them to a portion of the population of the cities of Quebec and Montreal.

It has not been satisfactorily ascertained that the disorder has been communicated within our State, although a few cases of sudden death have occurred, which would not have attracted particular notice in ordinary times. Whether the disease which has proved so fatal in Canada is the cholera, or has been produced by the very unfavorable circumstances under which an unusual number of the most destitute class of emigrants have been landed during warm weather, in a strange climate, cannot be known without a more minute and scientific examination of facts. But so far as facts have been ascertained, there is reason to believe that the two disorders, if of different character in other respects, resemble each other in these particulars, that they are caused by inattention to cleanliness, and by enfeebling dissipations and excesses, and may be communicated from one person to another in a tainted atmosphere. Cleanliness in and about houses and neighborhoods is believed to be the most effectual barrier against the spreading of this and other similar diseases.

Most of the emigrants who land in Canada direct their course toward the United States, with a view of settling there, and thus expose our fellow citizens to the contagion of diseases which they may bring with them. Heretofore it has not been deemed necessary to guard any avenue for the approach of infectious diseases, except the city of New York, and our quarantine and health regulations relate chiefly to that city. No power now exists in any public officers or municipal authority elsewhere to interfere to prevent the introduction of disease into other parts of the State. We shall be annually exposed to similar incursions, and I respectfully recommend to you to pass such laws as may be necessary to enforce a sanative quarantine, at or near the other ordinary points of ingress to our State, and to invest the proper officers with sufficient power to act promptly and efficiently in times of alarm and emergency. An infinitely wise and just God has seen fit to employ pestilence as one means of scourging the human race for their sins, and it seems to be an appropriate one for the sins of uncleanliness and intemperance; and when we can trace its existence and propagation under any circumstances to certain causes, it is our duty to employ suitable means to remove those causes and to arrest its progress.[16]

Having thus discharged our duty, we may repose with confidence upon a power, wisdom and mercy beyond our control or comprehension, to bless our exertions and prayers, by removing from us in due time existing calamities, or by averting those which may threaten.

E. T. THROOP.

Albany, June 21, 1832.

July 2. The Legislature adjourned without day.

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[16] By chapter 333, passed June 22, "for the preservation of the public health," quarantine regulations were to be imposed on vessels coming to New York, from any place in which Asiatic or malignant cholera or any other malignant disease was known to exist. The act also contained provisions relative to the organization of boards of health in different parts of the state, and prescribed details of administration.

REPORT ON RAILROADS.

A committee of the Assembly presented a report on the 30th of January, in which the subject of internal improvements was discussed at some length. [See the Governor's observations on railroads, *ante*, p. 374.] Comparisons were made between turnpike roads, canals and railroads as means of communication suitable to various conditions of surface and climate. It was said that there was a general movement in favor of railroad corporations, and the construction of railways which it was believed would supersede to a large degree other means of communication. Experience in railroad building and operation was, however, quite limited, and the committee considered various problems, which to the more modern world have ceased to be problems.

The committee said the first mention of railroads in England was in the year 1600, when they were made for crossing marshes, where materials could not be procured for constructing a solid road. They had been described in Russia as early as 1676. At the time of this report, 1832, it was estimated that there were nearly 3000 miles of railroad in England.

Concerning motive power, the committee said:

"The introduction of the locomotive steam engine, as a moving power on railways, and the extraordinary increase of speed as well as power, which has been thereby attained, promise to work a revolution in human affairs, as great as has been accomplished by the application of steam to the purposes of navigation.

Twenty years ago, we believe, the mails did not travel faster than about 7 miles an hour. From 7 miles it was raised to 8, and every one cried out what an improvement. From eight it was raised to 9, and this was hailed as nothing less than prodigious. Attempts are making to force it up to ten miles an hour, but at anything beyond this, to a certainty, horse power fails us. How then shall

we find terms adequate to express the value of a discovery which carries us at once from ten to twenty or thirty miles an hour?

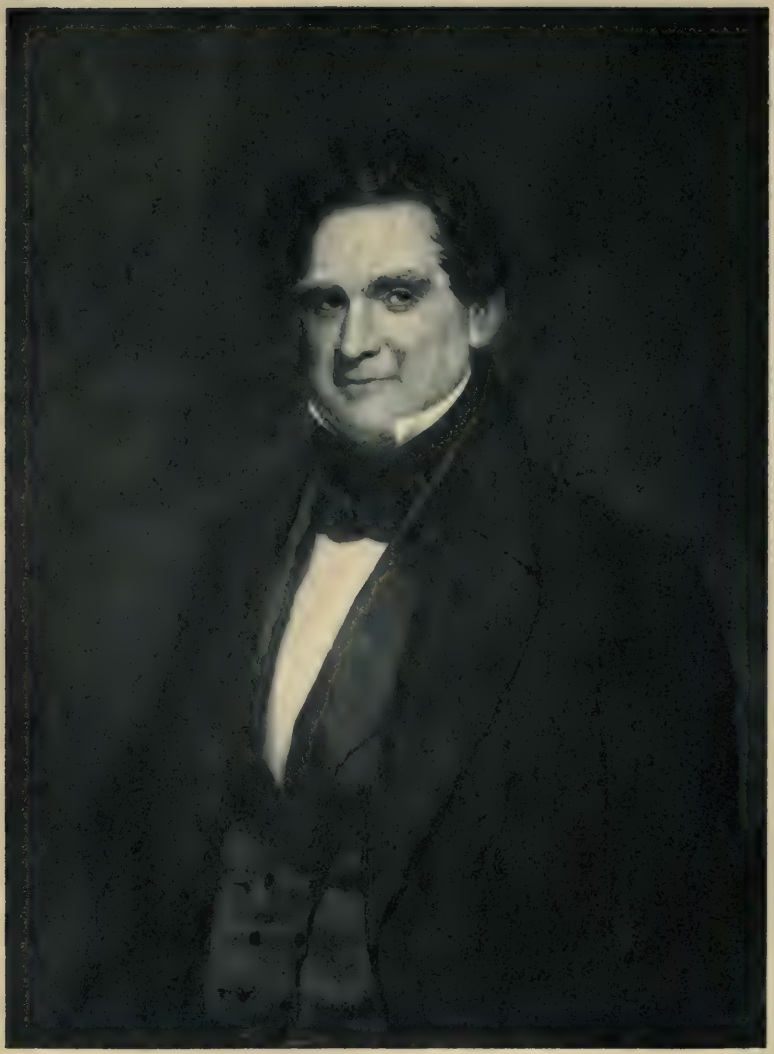
The experiments which have been made in England, go far to prove that we have not yet arrived at the point where improvement in speed must cease. The present average speed upon the Liverpool and Manchester railway is sixteen miles per hour. The maximum velocity, unloaded, is thirty-two miles per hour. With a load of thirteen tons, including many passengers, Mr. Stephenson's engine, the Rocket, travelled at the rate of fifteen miles an hour; and the engine of Braithwaite and Erickson, of London, moved at the astonishing speed of 28 miles an hour. 'It seemed indeed,' said a spectator, 'to fly, presenting one of the most sublime spectacles of human ingenuity and human daring the world ever beheld. It actually made one giddy to look at it, and filled thousands with lively fear for the safety of the individuals who were on it, and who seemed not to run along the earth, but to fly, as it were, on the wings of the wind. When in the vehicle,' he continues, 'nicely poised on springs, and covered in to exclude the external current of air created by its motion, you might imagine you were in a state of perfect rest, while you are flying along the surface with the speed of a racer. Then the steam horse is not apt, like his brother of flesh and blood, to be frightened from his propriety by sudden fancies which defy the prudence and skill of the driver. Explosion, if it takes place will not injure the passengers, for they are in a separate vehicle, and the enginemen may be trusted with the care of their own lives. In daylight, and with good arrangements, travelling in the steam coach, at twenty miles an hour, may be much more safe, as well as pleasant, than in an ordinary stage coach at eight or nine.'

The practicability of railways for the transportation of passengers has been proved beyond question, and from recent experiments no doubt can be entertained that every

description of article will eventually be conveyed on rails. Even now many companies in England owning the most profitable canals in the kingdom, contemplate draining them, and laying railways on their site. Should they do so, it will be a very strong evidence of the superiority of railways over canals, in the transportation of bulky articles."

The committee discussed the question of the cost of construction, the facilities afforded by railroads in all branches of commerce, and the routes deemed most feasible in the State, especially urging the construction of a road connecting the Hudson River with the western part of the State, through the southern tier of counties. The committee recommended that the State become a stockholder in all the leading routes, "not so much for the gain which may be made to the revenue, as for the equalization of benefits."

Twenty-seven railroad companies were chartered at this session; the State did not take stock in any of them, but in each charter reserved the right to buy the property of the company after a specified time.



Wm. L. Marcy

WILLIAM L. MARCY, Governor.

ANNUAL MESSAGE, JANUARY 2.

FELLOW CITIZENS OF THE SENATE AND THE ASSEMBLY.—In reviewing the condition of the State since the last annual meeting of the Legislature, we have cause to be thankful that all the sources of our prosperity continue undiminished. The labor of our citizens, in every department of industry, has been rewarded with a generous return; our harvests have been abundant, our manufactures flourishing, and our internal commerce growing in activity and extent. It has usually been the grateful duty of my predecessors, in adverting to the occurrences of the preceding year, to acknowledge in their annual messages a large measure of public health, as one of the blessings which the Sovereign Ruler of nations had vouchsafed to the people of this State. But during the past season he has, doubtless for wise purposes, permitted a malignant disease to ravage our principal cities and villages, and to sweep away many thousands of our fellow citizens. It becomes us as dependent beings, sharing largely in his bounties, to submit with humble resignation to all his afflictive dispensations. Considering the many millions of the human family who in Asia and Europe had fallen victims to this epidemic, its appearance among us was naturally regarded as one of the greatest calamities. But we have reason to rejoice, although our apprehensions of its destructive power were during its prevalence fully realized, that the period of its duration was so brief, and that it has now ceased to exist within this State. Whether it shall return to renew its work of destruction, and clothe our land in mourning, must depend upon the sovereign will of Him who holds in his hands the destinies of mankind. As guardians of the public

health, it is your duty to prevent, as far as it can be done by human agency, the re-appearance of this fatal scourge; and, in the event of its return, to mitigate its severity and circumscribe the sphere of its ravages. The act relative to this subject, passed at the last session of the Legislature, as to some of its important provisions, will expire on the first day of February next. The propriety of continuing those provisions, with such additions and modifications as experience has suggested, is respectfully submitted to your consideration.[1]

Our penitentiary establishments have heretofore received, as they certainly deserved, the peculiar regard of the Legislature. To such institutions philanthropists have long looked for a diminution of human sufferings, moralists for a check to human depravity, and statesmen for a valuable improvement in the affairs of government. The results anticipated from this system, were the almost entire abolition of sanguinary punishments, the reformation of delinquents, the decrease of crimes, and the relief of the public, to a great extent, from the onerous burden of supporting those who, by a violation of the laws, should forfeit the rights and privileges belonging to obedient citizens and render themselves unworthy as well as unsafe members of society. In some considerable degree these anticipations have been realized. Your benevolent feelings will come in aid of your sense of duty to urge you on, to do whatever yet remains to be done to improve the system and make it subserve, as far as practicable, the beneficial ends for which it was instituted. The full consideration which this subject received from my immediate predecessor, and the sound views and wise suggestions, not only in relation to the State Prisons, but to subordinate establishments, contained in his annual messages, render it, as I conceive, unnecessary for me to enlarge upon these topics.

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[1] The public health act of 1832, was renewed for one year by chapter 221, passed April 25.

There is also another reason which induces me to abstain from them at this time. At the last session of the Legislature, the House of Assembly appointed a committee to visit the State prisons, to examine the manner in which their accounts are kept and their affairs conducted, and to report the result to the Legislature. This examination has been made; and you may expect, at an early day in the present session, a report which will furnish such information as you may require to guide your legislation on this interesting subject.[2]

In the course of the last summer, the epidemic cholera made its appearance in the prison at Mount Pleasant, and prevailed there for about forty-five days. The number of cases was three hundred and seventy-six, and the deaths one hundred and three. On receiving notice of this event, the Executive, with commendable promptness, repaired to the prison, in order that the most efficient assistance should be given to the sick, and the best measures taken to check the ravages of the disease, and abridge the period of its duration.

I am not aware that the prevalence of the epidemic in this institution has indicated the necessity of any further legislation in regard to our penitentiary establishments, except the adoption of a provision excluding, for a proper period, all convicts coming from places where contagious, or epidemic, diseases of a malignant character prevail, and for keeping the persons thus excluded in some healthful situation, until they can be introduced with safety among the other prisoners.

The number of convicts belonging to this prison, including the females confined at Bellevue, is eight hundred and sixty-six. Two hundred and seventy-three have been received into it during the last year. This number is sixty-

2 The report of the Assembly special committee on prisons, appointed in 1832, was presented on the 26th of February. See Assembly Document, 1833, No. 199.

five less than that of the year preceding. The total number of deaths, including those by the cholera, is one hundred and forty-five. One hundred and sixty-five convicts have been discharged on the expiration of their sentences—sixty were transferred to the prison at Auburn, and thirty-two pardoned. By reason of the prevalence of the cholera, the financial affairs of this prison do not exhibit the favorable result that was anticipated. A full statement in relation not only to this subject, but to the entire operations of this establishment, will be submitted to you in the annual report of the inspectors.

The account from the state prison at Auburn, presents a highly gratifying result. The number of convicts in it at this time, is six hundred and seventy-nine. One hundred and twenty-seven were received into it, pursuant to the sentence of courts between the first day of January last and the twenty-second day of December following. This is twenty-seven less than the number received there the preceding year. One hundred and fourteen have been discharged by reason of the expiration of the period for which they were sentenced; twenty-seven have been pardoned; twelve have died, and one was released by order of the Supreme Court. The sum charged during the year ending on the thirtieth of September last, for the services of the convicts, to those who employed them, is forty-one thousand, five hundred and fifty dollars and thirty-two cents; and the expenditures for the general support and repairs of the prison, including the expenses of erecting a stone shop, one hundred feet long and forty wide, have amounted to thirty-eight thousand, three hundred and five dollars, and thirty-one cents. The Legislature directed, at its last session, two hundred and twenty additional cells to be built in this prison, and authorized the payment of six thousand dollars from the treasury for this purpose, if it should become necessary, in addition to the unexpended balance in the hands of the agent, accruing from the earn-

ings of the convicts. These cells have been built during the past season, from the avails of the labor of the convicts, without resorting for any aid to this appropriation. These additional cells will enable the agent to assign a separate one to each convict, thereby giving full effect to a valuable improvement in prison discipline.

It is worthy of remark, that there has been no conviction for murder or other capital offence in this State during the past year; and that the whole number of sentences to the state prisons during the same period, has been ninety-two less than those of the preceding year.

I cannot reconcile it to my sense of duty, to pass from this subject, without calling your attention, as my immediate predecessor has repeatedly and earnestly done, to what I am persuaded would be a valuable improvement in our penitentiary system — the erection of a separate prison for female convicts.

I have received from the Mayor of the city of New York information that the subordinate authorities of a foreign government have sent on board a vessel bound to that place, a number of convicts. As soon as the fact was ascertained, an application was made by him to the general government for the interposition of its authority to prevent this practice. The answer to this application intimates that the remedy must be applied by the State, or by the municipal authorities of our cities. A regard for the morals of our citizens, as well as the safety of their persons and property, requires, that the introduction of such persons within our borders should be prevented as far as practicable. I therefore respectfully suggest, that you should take this subject into your consideration, and provide a remedy for the evil.[3]

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[3] The Legislature responded to the Governor's suggestion relative to the importation of convicts by enacting Chapter 230, to prevent the introduction of foreign convicts, imposing the punishment of fine or imprisonment upon a master or commander of any ship, boat or other vessel arriving from a

At a late Court of Oyer and Terminer held in the city of New York, the lotteries were presented as unauthorized by constitutional laws, and a public nuisance. In compliance with the request of the grand jury making the presentment, the court has transmitted it to the Governor, in order to have the subject brought to the attention of the Legislature. At the last session, a resolution was passed by the Assembly, directing the Attorney-General to examine the question, as to the constitutionality of the law authorizing the lotteries, and to report thereon to the present Legislature. When his report is received, you will, I trust, take the subject into consideration, and make such disposition of it as shall comport with the public interest and the rights of individuals.[4]

The militia system has an essential connection with the preservation of our liberties. The political sagacity which, in the organization of our government perceived the importance of laying its foundations in popular principles, saw also the necessity of arraying the whole body of our

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foreign country who should knowingly bring any foreign convict into the State. The statute authorized the remission of the punishment on proof that the master or commander had reconveyed the convict to the place from which he came.

4 The Assembly committee which had under consideration the part of the Governor's message relative to lotteries, and also the report of the Attorney General, submitted a report on the 7th of February, in which the constitutionality of lottery statutes was discussed at some length. The committee concurred with the Attorney General in the opinion that the laws under which the lottery system had been conducted were strictly constitutional. The committee said that upon the question when the lottery statutes should cease, and authority to act under them should terminate, the Attorney-General and the lottery contractors did not agree. The committee thought that any extra-judicial matter like legislation or exparte opinions, would have no weight in determining the question. It was further said that the contractors had consented to accept the decision by the legislature, if made, that the right to draw lotteries should cease on the last day of December, 1833. The committee recommended the adjustment of the matter on the basis suggested, and a law, chapter 306, was accordingly passed, fixing the period for closing all the lotteries authorized to be drawn in this state. The act prohibited the drawing of any lottery after the last day of December, 1833.

citizens in support of the public authority, and in defence of our sovereign rights. If the only advantage resulting from the periodical trainings of the militia was to suggest to those of whom it is composed a sense of the solemn responsibility which devolves upon them as a part of the public defence, and the duty of being at all times prepared for the exercise of that exalted function, this alone would be a sufficient reason for upholding the system, even with its present expense and inconvenience. But it is believed that there is no difficulty in removing, consistently with all the ends of its institution, a large portion of the public burden, which in the progress of events has become unnecessary. This object cannot, however, be accomplished by State authority. The constitution of the United States has given to Congress the power to provide for organizing, arming and disciplining the militia, and the power has been exerted by an act of Congress passed at an early period of the Government.[a] The provisions of this act cannot be suspended or vacated by the laws of the State. They prescribe the extent of the enrolment, and define some of the most important as well as the most onerous duties connected with the instruction and discipline of the militia. The changes which have been wrought in the condition of the people of the United States since this act was passed, require modifications of some of its most essential provisions; and it is due to the people that no burden should be continued, when the exigency which called for it has ceased to exist. The alterations in the established system deemed most material, are a diminution of the period of enrolment and some provisions by law, which shall convert the expense of arming the militia from an unequal tax upon the person performing the service, into a just and equal tax upon the property of all. The President of the United States has, in his recent message to Congress,

[a] U. S. Const. art. 1, § 8, clause 16.

called their attention, in general terms, to this important subject, and it is earnestly to be hoped that they will make such amendments to the militia law as shall, without impairing the efficiency of the system, diminish to every practicable extent, the burden of military service. In the meantime, every good citizen will esteem it his duty to uphold by his countenance and support the law as it exists, and to discourage, so far as may be in his power, all attempts to bring into disrepute an institution which, whatever defects it may have, is as vitally connected as any other with the durability of popular governments.[5]

It will appear by the annual returns of the Adjutant General, that the numerical force of the militia of the State exceeds 188,000 men.

Of all our institutions, there is none that presents such strong claims to the patronage of the government, as our system of common schools; and it is gratifying to know, that these claims have been recognized, and to a very considerable extent satisfied. The wisdom and providence of our legislation appears perhaps no where so conspicuously, as in the measures which have been adopted, and the means which have been provided, for the general diffusion of primary education among the children of all classes of our citizens.[6] The communication on this subject, which you

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[5] The Governor's suggestion as to the militia was adopted, and expressed in a concurrent resolution requesting senators and representatives from this State to "use their exertions to procure such amendments of the act of Congress organizing the militia, as shall relieve the people, so far as practicable, from the burdens of the system, without impairing its efficiency."

[6] The following concurrent resolution was adopted:

"That, in the opinion of the Legislature, the work entitled 'The Life and Voyages of Christopher Columbus, by Washington Irving, abridged by the same,' from the national character of the subject, the fidelity and interest of the narrative and the purity and elegance of the style, is eminently fit to be used as a class book in the common schools of this state; and it is hereby recommended to the trustees of the several school districts to take the necessary measures to introduce the same into the schools under their charge, with as little delay as circumstances may permit.

will receive from the Superintendent of Common Schools, will exhibit very satisfactory results. Reports have been received by him, from eight hundred and eleven towns and wards, (the whole number in the State,) containing abstracts of returns from eight thousand, nine hundred and forty-one districts, in which there are five hundred and eight thousand, eight hundred and seventy-eight children, between five and sixteen years of age, of whom, four hundred and ninety-four thousand, nine hundred and fifty-nine have been taught in the common schools during the past year. The public money distributed last year to the several districts, amounts to three hundred and five thousand, five hundred and eighty-two dollars, including the annual appropriation of one hundred thousand dollars derived from the common school fund, and the sum of seventeen thousand, one hundred and ninety-eight dollars produced by the local funds belonging to certain towns. Besides these sums of public money, the inhabitants of the districts have paid three hundred and fifty-eight thousand, three hundred and twenty dollars; all these several sums, amounting, in the aggregate, to six hundred and sixty-three thousand, nine hundred and two dollars, have been expended during the last year in payment of the wages of teachers. The Superintendent estimates, from the data furnished by the reports of the last year, that the expenditure under this system has been one million, one hundred and twenty-six thousand dollars, of which the public fund provided by the State, contributed less than an eleventh part. An active and adventurous spirit of improvement, characterizes the present age: its best direction would seem to be, towards multiplying the facilities, and conse-

That the secretary of state, as superintendent of common schools, be, and he is hereby directed to address a circular letter to the trustees of the several school districts within this state, enclosing a certified copy of the preceding resolution, and supporting the propriety of the recommendation therein contained with such observations as he may deem proper."

Chapter 301, passed April 30, incorporated the Aurora Manual Labor Seminary in the county of Erie.

quently abridging the time and labor, of acquiring knowledge. I indulge the hope that much may yet be done in this respect for primary education. One of the most obvious improvements in relation to common schools, would be a plan for supplying them with competent teachers. Under present circumstances, the remedy to the evils resulting from the employment of persons not properly qualified can only be applied by the trustees and inspectors, and I am not apprised that any further direction for regulating their duties in this respect could be usefully presented to the Legislature.

The two medical institutions established by the authority of the State, and cherished by its patronage, are in a highly flourishing condition. The number of pupils attending the course of lectures at the college in the city of New York, has for several years past, been annually increasing, and is now one hundred and eighty-eight; the number in the college of Fairfield, is one hundred and ninety.

I commend, also to your care and protection the colleges, and other seminaries of learning in this State. They shed a healthful influence upon our free institutions, and contribute in an efficient manner, and in various ways, to improve our social condition.

Nothing, I am convinced, need be said by me, to turn your favorable regard toward institutions having for their object the dispensation of benefits to those from whom have been withheld some of the best faculties that belong to the common condition of us all. The asylum for the instruction of the deaf and dumb at New York, is provided with capable teachers, and merits the public confidence, and a continuance of the fostering care and patronage of the legislature. There is a diminution in the income provided for the support of this institution to such an amount, that it has become necessary, in order to continue its present usefulness, that aid should be given to it. An application will be made to you for assistance, and will no doubt re-

ceive your kind consideration. I regret to learn that the Central Asylum for the deaf and dumb is in a less prosperous condition, and still more deficient in its pecuniary means, than the institution in the city of New York. It has also claims to your favorable consideration, and to the bounty of the government.[7]

The method of giving relief and support to indigent persons, by the adoption of the county poor-house system, in most of the counties, has essentially improved the condition of this class of persons, and greatly diminished the charge upon the public for their maintenance. In forty-five counties farms have been purchased, and poorhouses erected, at an aggregate expense of two hundred and sixty-eight thousand, eight hundred and fifty dollars; being an average expense to each county of five thousand, nine hundred and seventy-five dollars. In this estimate are not included the almshouse and penitentiary in the city of New York, which cost five hundred and thirty thousand dollars. The number of persons in the poorhouses on the first of December, one thousand eight hundred and thirty-one, including the city of New York, was five thousand, five hundred and fifty-four; and the average annual expense of supporting each pauper in these establishments, as ascertained from the reports of the superintendents of the poor, is thirty-three dollars and twenty-eight cents. The abstract of the reports of county superintendents, which the Secretary of State is required to lay before you, will furnish the results of the system for the past year.

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7 By chapter 109, passed April 6, the New York Institution for the Instruction of the Deaf and Dumb, was authorized to receive five additional pupils from each Senate district, to be known as State pupils, and maintained at the expense of the state for five years.

A senate committee reported that "it was not expedient to support two separate institutions for the instruction of the deaf and dumb in the state. That the legislature ought not to make any appropriation for the erection of buildings, shops or other fixtures for the Central Asylum for the Deaf and Dumb, at Canajoharie." No appropriation was made for this institution.

The several funds of the State, except that ordinarily resorted to for the means of defraying the expenses of the government, are in a prosperous condition. The income from the Erie and Champlain canals, and the canal fund, during the last year, is about one million, five hundred and ninety-four thousand dollars. The Commissioners of this fund now have under their control, applicable to the payment of the canal debt when it shall become due, or sooner if the stock can be purchased on favorable terms, about three millions and fifty-five thousand dollars. If no important changes take place, in the business upon these canals, and none of the revenues are diverted from the fund, it is reasonable to anticipate that before the first of January, one thousand eight hundred and thirty-eight, means will have been realized for the entire extinguishment of the whole of this canal debt; but should the change now contemplated, as to two important items of this revenue, be effected, the period at which the Commissioners will be in possession of the means to discharge the whole debt, will be proportionably deferred. The views of the Commissioners of the Canal Fund, as presented in their last annual report, have been substantially realized, in relation to the Oswego canal fund, and the Cayuga and Seneca canal. The revenues have been less than the estimates, and the deficiencies to be drawn from the treasury have a little exceeded them. The estimated deficiency for the current year in the revenues of the Oswego canal fund is nineteen thousand, three hundred and sixty-seven dollars, and thirty-six cents; and that of the Cayuga and Seneca canal, four thousand, three hundred and fifty dollars; making together a total of twenty-three thousand, seven hundred and seventeen dollars, and thirty-six cents.

The expenditures upon the Chemung canal, during the last fiscal year, were eighty-nine thousand, nine hundred and thirty-nine dollars, and sixty-eight cents; and the balance of moneys in the hands of the Commissioners, on the

thirtieth of September last, appropriated to the construction of this canal, was thirteen thousand and eighty-six dollars and thirty-nine cents. I learn, however, that the Commissioners are authorized, by existing laws, to make further loans for this object, to the amount of twenty-five thousand, seven hundred and thirty-seven dollars, and that this sum was supposed to be sufficient for the completion of the work. Not having received from the Canal Commissioners any intimation that further means will be required, or that any further legislation is called for in reference to this canal, I am not aware that the subject will claim your particular attention.[a]

The Crooked Lake canal is also in progress, and the expenditures upon it, between the twelfth of October, one thousand eight hundred and thirty-one, and the thirtieth of September of the following year, amounted to sixty-seven thousand, nine hundred and six dollars, and forty-six cents. The unexpended balance, on the latter day, of moneys applicable to this canal, was nineteen thousand, two hundred and five dollars, and eighty-seven cents; and twenty thousand dollars of the appropriation had not then been borrowed. I am not advised that the work will require additional appropriation. The Canal Commissioners will communicate to you the present condition of the two last named canals, and their opinion as to the period when they will probably become navigable.

The fund set apart for the encouragement and support of common schools, is safely vested, and in a highly prosperous condition. The constitution declares that this fund "shall be and remain a perpetual fund, the interest of which shall be inviolably appropriated, and applied to the support of common schools throughout this State."[b] This

[a] By chapter 115, passed April 6, the canal board was authorized to make extra allowance to contractors for specified expenditures on the Crooked Lake and Chemung Canals. By chapter 316, passed April 30, any deficiency in the Chemung Canal fund for purposes of construction, maintenance, repairs or interest, was to be charged against the general fund.

[b] Const 1821, art. 7, § 10.

injunction has been faithfully observed. Since the adoption of the constitution, the net increase of this fund has been five hundred and seventy-nine thousand, three hundred and forty-seven dollars; and the whole of it now amounts to one million, seven hundred and thirty-five thousand, one hundred and seventy-five dollars. The capital is now sufficiently productive to yield the one hundred thousand dollars required by law to be annually distributed for common school instruction.

The Regents of the University are enabled to apportion annually to the academies ten thousand dollars, from the revenues of the literature fund.

The general fund is almost exhausted, by the liberal contributions it has yielded to all the other funds, by the payment of the State debts, and by furnishing, unaided for the last five years, all the means for the ordinary and extraordinary expenses of the government. The revenue from this fund has at no time been sufficient, without the avails of a general tax, to satisfy the demands upon the treasury. In order to meet these demands, and to relieve our fiscal affairs from embarrassments, it became necessary, in eighteen hundred and fourteen, to impose a tax of two mills on each dollar of the valuation of real and personal property in the State. This tax was continued until eighteen hundred and eighteen; then it was reduced to one mill; in eighteen hundred and twenty-four, to half a mill, and in eighteen hundred and twenty-seven it was wholly discontinued. When the Legislature refused to continue the tax it was well understood that the general fund could not long sustain the burden cast upon it; that its capital would be rapidly reduced, and soon exhausted. Though this event has not approached so rapidly as was anticipated, it is now at hand, and this session should not, in my judgment, be permitted to pass away without providing the means, by the adoption of some settled plan, to satisfy the demands

that must inevitably be made upon the treasury. The annual expenses of the government, in future years, will not fall far below three hundred thousand dollars, and all the available means for the current year, other than a resort to the remaining capital of the general fund, will be less than one hundred thousand dollars.

According to the statement of the Comptroller, the capital of this fund is now only five hundred and seventy-eight thousand, three hundred and ten dollars; and if from this amount, be deducted the debt due for the stock issued to John Jacob Astor, now payable at the pleasure of the State, this capital may be regarded as almost entirely expended. At the period when the State tax was discontinued, I had the charge of the financial department of the government. Disapproving of the policy of impairing the general fund, I recommended the continuance of the tax; and in subsequent years I deemed it my duty to urge a return to it. It would be useless to attempt now to determine whether the policy thus recommended, and I believe every year since, urged upon the Legislature by the head of that department, and for the three last years by the Executive, were preferable to the course which has been pursued. We are now brought to a condition in which the expedient heretofore used for meeting the demands on the treasury, can be no longer resorted to, and a new system of revenue must be devised.[9]

A movement has been made for the purpose of releasing the auction and salt duties, from the constitutional pledge, by which they are secured to the canal fund.[c] If this measure should be consummated, and the avails of these duties restored to the general fund, and the amount of the income from these sources should not be materially affected, by the anticipated change in the salt duty, or the possible legislation of Congress, in relation to auction sales,— the revenue would in this manner, receive an augmentation

[9] See *post*, p. 439, for note on taxation and canal development.

[c] Const. 1821, art. 7, § 10; Am. 1833.

which will render it nearly, or quite, equal to the demands upon it. But it will be perceived, that this proposed measure is beset with contingencies which cannot be effectually controlled by your legislation. The people may not approve of the proposition to release the pledge; and if they should, it may not be deemed wise to draw, after the canal debt is paid, a large revenue from these sources, or to devote what may be thence drawn, to the support of the government.[10]

The canals are rapidly accumulating the means for the extinguishment of the debt for which their income is hypothecated. When this object is accomplished, the tolls may, with fair claims of justice, be resorted to, for the means of replenishing the treasury, to an amount, at least, equal to the sum abstracted, for the benefit of the canals, from the general fund. On whatever principle this account shall be stated, the sum that will be found due, will probably be sufficient, not only to reimburse any loans which may be made for defraying the expenses of the government, but to afford a temporary aid to such works of internal improvement as the State may think it wise and prudent to undertake.

The money diverted from the general fund to the use of the canals, belonged equally to the citizens in all parts of the State; but the object to which it was appropriated, though eminently beneficial to all, was not so to all, in an equal degree. The inhabitants, in districts of the State remote from the canals, do not derive as much advantage from them, as those in their immediate vicinity; they will therefore naturally prefer to have the treasury replenished by a repayment of the contributions made to the canals, rather than by resorting to a general tax. The justice of a claim upon the revenue of the canals to some extent, in favor of the general fund, will probably not be denied; but

[10] A constitutional amendment relating to auction duties was approved in 1835.

the amount which shall be repaid, and the objects to which it shall be appropriated, will doubtless give rise to much diversity of opinion. If we were prepared to settle these questions, we have not the power to do so; they must be left for our successors. Shall we then anticipate their decision, and accumulate a debt for the ordinary expenses of the government, trusting to the future appropriations of the income of the canals, for its repayment? Without a confident reliance on this, or some other certain and specific resource for its redemption, there are, in my mind, strong objections to the creation of such a debt. A national debt has been regarded by the true friends of a republican government as a national evil. When the public funds are not drawn immediately from the people, a proper sense of dependence on the part of those who have the appropriation of them is lost; and a salutary check to improvident and profuse expenditure is removed. When the motive for the constituent to scrutinize the conduct of the representative is enfeebled, the latter ceases to feel and act under the consciousness of a due accountability. If the force of this relationship in a government like ours be weakened, the action of the whole political system is deranged; economy is no longer regarded as a political virtue; public spirit loses its true aim, and its energies are directed to personal and ignoble ends. A large funded debt has a tendency to create artificial distinctions among the people — to divide society, into the rich and the poor, and to bring about a state of things, in which labor is made tributary to wealth, and power purchased by influence. At this time, when the general government is presenting for the admiration of the world, the unprecedented fact, of the total extinguishment of a large national debt, it would ill become this State, eminently distinguished for her wealth, her resources, and the enterprising spirit of her citizens, to counteract in any degree, this impressive political lesson, by the commencement of a debt for the purpose of defraying the expenses of her government.

A national debt may be the result of inevitable necessity. The efforts which nations are sometimes required to make, to recover their civil liberty, or to defend their rights, may involve an expenditure beyond their present ability to pay. A debt thus contracted, confers no reproach, and its payment may be deferred until the people that incurred it, have replenished their resources, and become able to sustain the burden of discharging it, without withering their prosperity. Such was the origin of our national debt, and such has been our course in regard to its payment. The debt contracted by this State on account of the canals, is justified on a different principle. The object for which it was incurred, was specific, and ample means for its speedy redemption was provided in the very act which authorized it. It could in no event have been forwarded on to a future age, as an incumbrance upon it, to be paid by a general tax, without a violation of the most solemn pledges.

Whether a resort to a general tax, moderate in amount, in order to provide the means to meet the exigencies of the government, shall be foreborne, and a reliance be placed on the chance of deriving sufficient aid for that purpose from the duties on salt, and auction sales; or a debt shall be contracted, with a view to its redemption from the canal revenue, after it is relieved from its present hypothecation, are questions which may with propriety be left to the immediate representatives of the people. If upon due deliberation, you should determine to levy a tax, and leave the other revenues unanticipated and unimpaired, to be managed and disposed of by your successors, as the best interests of the State shall indicate, when the existing incumbrance is removed, I feel the fullest confidence that the people will cheerfully acquiesce in the decision.

There is no subject connected with our local affairs that we can contemplate with so much satisfaction as our works of internal improvement. The advantages resulting from them are felt in all parts of the State, and in the diversified

occupations of our citizens. Everywhere their beneficial effects are visible, bearing testimony to the wisdom which conceived the system and to the enterprise which put it into practical operation. The peculiar formation of our State, indicated at an early period to some of our enlightened and sagacious citizens, the practicability, as well as the usefulness, of connecting the great northern and western lakes with the Atlantic ocean by means of artificial water communications. The enterprise of the present age has most successfully carried into effect the grand conceptions of the past. The spirit which prompted us to enter upon this system was not, however, wild and reckless; while it anxiously sought the end, it carefully estimated and wisely provided the means for its attainment. Though much has been done to improve the condition of our State, much yet remains to be done. While we allow the success which has attended our efforts at home, to impel us forward in the career of improvement, we should not be regardless of the less fortunate effects which have resulted from similar enterprises abroad. On the one hand, it would be unworthy of the character of the State to pause in this career; on the other, it would be more unwise to rush forward in it, accumulating burdens upon the people without securing proportionate advantages.

From all internal improvements, there necessarily result local benefits, and it is natural that those parts of the State which have not participated in them should indulge an impatient desire to do so. Wise legislation should endeavor to gratify this desire as far as practicable, when it can be done with due regard to the public interest. Local interests concurring with, or pretending to, the general good, will devise and press upon your consideration particular plans for improvement, both by canals and roads, and if you should determine that it was expedient to do more at present than to complete those already begun, the difficult and responsible duty of selection will devolve on you. Though

revenue is not the sole consideration that should influence your decision, it ought to have great weight with you, for it will be a test of the public usefulness of the work. In my judgment, the first object of inquiry should be, to ascertain, as accurately as possible, the amount of expenditure a proposed work will involve; and the next, the amount of revenue that may be derived from it. If the revenue promises to be sufficient to keep it in repair when finished, to defray the expenses of superintendence and the collection of tolls, and to meet the claims for interest on the capital expended, sound policy requires that it should be constructed. Even if a less favorable result should be anticipated for a few years, the question of authorizing the construction of a public work may yet be very properly entertained. An improvement, opening an easy and cheap communication into the interior of any part of the State, would soon develop new resources in that section, increase the quantity of its productions, and expand its trade. If it should require the lapse of a few years to produce these effects, and to increase the revenue to an amount sufficient for the purposes before specified, this would constitute no conclusive objection to the undertaking. Should the proposed work be connected with those now in operation, the effect it might have on the productiveness of them should also be regarded, and to a reasonable extent, influence your decision. Improvements that will ensure these results at the time of their completion, or shortly thereafter, should inspire no dread that a general burden will be cast upon the State, to discharge the debt created for their construction; because the gradual growth of the adjacent country, and consequently the extension of trade, will increase the revenue, until there will ultimately be a surplus to be applied in redemption of the debt contracted on their account.

I am not possessed of any particular information in regard to most of the applications for internal improvement, which may be brought before you at the present session;

it would therefore be useless for me to go into any enumeration of them, for the purpose of submitting to you general remarks, which are probably alike obvious to you all.

An application for a public work, to connect the waters of the Susquehannah with the Erie canal, by a communication through the valley of the Chenango, has for several successive years been made to the Legislature, and will doubtless be again renewed at this session. The proposed canal extends about ninety-five miles through an interesting section of the State, and will afford additional facilities to a market, for the products of a considerable portion of our citizens. Repeated examinations of the route have been made by skillful and experienced engineers, and the practicability of the work well ascertained. The expense has been uniformly estimated by the engineers, at less than one million of dollars; but the Canal Commissioners are of the opinion, that it will involve an expenditure beyond that sum. The amount of revenue it will yield has been variously stated; some think it will not be sufficient to keep the canal in repair, and pay the expense of collection; while others who have given the subject an equally careful consideration, entertain a confident belief that it will be abundantly sufficient to bring the application within the rule I have laid down as justifying, in my judgment, the construction of any public work falling within it. It remains for you to decide upon these conflicting opinions. I commend this proposed work to your favorable notice, with the expression of a strong desire that its merits may be found such as to induce you to authorize its construction.[11]

[11] The Chenango canal was authorized by chapter 32, passed February 23, 1833, which provided for the construction of a canal "from Binghamton in the county of Broome, up the valley of the Chenango River, to its head waters, and thence by the most advantageous route to the Erie canal without taking any of the waters of the Oriskany or Sauquoit creeks." A loan of $1,000,000 was authorized for the purpose of constructing the canal and provision was made for a possible deficiency.

Agriculture, manufactures and commerce are the three great departments of human industry. They furnish to all the means of subsistence, and the comforts of life, and constitute the only true sources of national wealth and prosperity. Legislators can never withhold from them a fostering care, without disregarding one of the most important and solemn duties which they owe to their constituents.

The power to regulate commerce is delegated to the general government,* and consequently the sphere of state legislation with regard to this subject, is very much circumscribed; it scarcely extends beyond the enactment of laws for the inspection of some of our principal domestic products, and the multiplication of facilities for the exchange and transportation of articles of commerce.

Manufactures are a branch of industry eminently connected with our prosperity, and at this time an object of peculiar solicitude to a large portion of our constituents. The principle of giving encouragement and protection to them, was recognized in one of the first acts of Congress passed after the adoption of the Constitution of the United States. The representatives of all the states in the councils of the nation, have at one period or another, given their sanction to this principle; and down to the present period, it has entered into and influenced, the policy of the Federal Government. The extent to which it should be carried, has often been in dispute; but the rightful authority to encourage and protect manufactures, either directly or incidentally, has not, until within a recent period, been seriously questioned by any considerable portion of the people of the United States. I am persuaded there is nothing in the operation of this principle, in a course of wise and prudent legislation, that conflicts with the objects for which our federal compact was formed, or that imposes unequal and oppressive burdens on the people of one section of the country, as the necessary consequence of the benefits it

* U. S. Const. art. 1, § 8, clause 3.

confers upon others. If this principle has been misapplied, and injurious effects have thereby resulted, the proper remedy for them does not require an abandonment of it.

From the consideration of these important subjects, I pass to one of greater and more general interest, lying more directly within the range of our legislative action, and demanding from us a particular attention. Agriculture was undoubtedly the primitive pursuit of men in a civilized state of society, and seems to be indicated to them by heaven as their best employment. Vigor of body and purity of mind, are eminently enjoyed by the husbandman. Without meaning to disparage any class of men, or to deny a due measure of public virtue and usefulness to all, history and experience warrant the assertion, that the cultivators of the soil have ever been among the first to cherish, and the last to abandon, free institutions. It is not however for this reason, that agriculture presents peculiar claims for your guardianship. It not only furnishes occupation to a much greater portion of our citizens than any other department of labor, but it supplies the materials for all others. It must be regarded as a matter of some surprise, that an employment in which so great a number of the human family are directly engaged, to which all look for their daily bread, and upon which commerce, manufactures and the mechanic arts — indeed all the various pursuits of mankind — so necessarily depend, should not have risen to a still higher consideration than it has yet attained, and received from those entrusted with the power of legislation more liberal aids.

The numerous agricultural societies organized in the several counties of this State in consequence of our legislation, flourished for a season, then languished, and are now generally dissolved. The interest of agriculture was, to a considerable extent, promoted by these societies. The contributions from the public treasury, distributed principally

in premiums, gave a sudden impulse to agricultural industry, and induced many laudable efforts among farmers, not only to excel in their productions, but to introduce valuable improvements in husbandry; yet it has been questioned whether the benefits thus obtained were of such an extensive and abiding character, as might have been realized by a different application of the funds derived from the government. Agriculture is a science, as well as an art; and both must be systematically cultivated, and widely disseminated, before it will attain a high degree of improvement. The general intelligence and individual enterprise of those devoted to this pursuit have carried the art as far, perhaps, as could be reasonably expected without a better knowledge of the sciences connected with it. With a salubrious climate and fertile soil; with extensive regions but partially brought under the power of cultivation; with rising manufactures and a flourishing commerce, demanding the surplus products of husbandry; with a population full of enterprise, and distinguished for native skill and practical talent, we may reasonably expect great advantages from the cultivation and diffusion of the sciences connected with this art. This subject appears to me to be in every respect worthy of your attention and to merit your liberal encouragement.

The Legislature has from time to time been informed by my predecessor, of the proceedings in the suit now pending in the Supreme Court of the United States, between this state and New Jersey, in relation to a disputed boundary. To the bill filed by New Jersey, a demurrer was interposed, on the ground that the court could not exercise jurisdiction in such a case.

The counsel of this State appeared in court in March last, and commenced the argument of this demurrer; but before it was concluded, the Court found it necessary to suspend the discussion, and assigned the first Monday of

February next for resuming it. Although our counsel entertain very decided opinions against the jurisdiction of the court, yet it is extremely desirable that the whole controversy should be definitively settled by an amicable arrangement. A decision of the issue formed by the demurrer in favor of New York, would not necessarily put an end to the controversy out of which the suit has arisen; on the contrary, it is possible such a result might serve to increase the embarrassments which have been already produced by the conflicting claims. But without reference to the possible issue of the proceedings now pending in court, the interests of both States, and many other important considerations, concur at this time in recommending an adjustment of this question upon terms of honorable compromise. Although two unsuccessful attempts have heretofore been made to accomplish this object, yet on reviewing the proceedings, I do not perceive any difficulty that may not be removed by new efforts to bring about a proper accommodation. Viewing the subject in this light, I feel that I shall not be considered as wanting in a just regard to the rights or the honor of our State, when I submit to you the propriety of making provision by law for appointing commissioners with full powers, to meet those of New Jersey, in case her Legislature should appoint them, with a view to such an adjustment of this question, as shall comport with the real interests and define the future rights of both states. Such a measure on our part, even if it should not be met by a corresponding one on the part of New Jersey, could not in the slightest degree compromit our rights; but I have reason to believe that it would be received with a liberal and conciliatory spirit, and might in all probability ultimately lead to an adjustment beneficial to both states. Such an amicable termination of the controversy could not be otherwise than gratifying to the feelings of their respective citizens, who entertain congenial sentiments, and are

united by the ties of kindred interests, and, to a great extent, of a common origin.[12]

It is but a few weeks since the last surviving signer of the Declaration of Independence was gathered to his compatriots.* Such an event is well calculated to excite feelings and reflections difficult to be suppressed, and not improper, perhaps, to be indulged, even on an occasion like this. The men who proclaimed our independence as a nation, were the most distinguished assemblage of sages and patriots that ever appeared in any country. The favor for which we should be most grateful, next to that of having such men for our forefathers, is the long life which it pleased a kind Providence to bestow on most of them. Some were permitted for nearly half a century after they had laid the foundations of our free government, to continue their invaluable labors in rearing thereon a structure of human liberty which stands without a rival, challenging the admiration of the world.

That we might not lose too much at once — that we might be gradually prepared to pursue, without the strong light of their example, the career which they had opened, they were, one by one, withdrawn from us. The last is now gone; and on us is devolved the high responsibility of preserving unimpaired the most valuable inheritance that one generation ever transmitted to another.

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[12] The New Jersey boundary line was the subject of chapter 6, passed January 18, which authorized the Governor to appoint three commissioners, who were vested with "full powers, on the part of the State of New York, to meet commissioners appointed, or who may be appointed, under or by virtue of a law of the legislature of the state of New Jersey, to negotiate and agree respecting the territorial limits and jurisdiction of the State of New York and the State of New Jersey." The determination and agreement of the commissioners was to be final and conclusive on the State of New York, when ratified by the Legislatures of the two States and approved by Congress. The Governor was required to transmit a copy of the act to the Governor of New Jersey. The commissioners agreed on a boundary line which was confirmed by chapter 8, passed February 5, 1834. New Jersey ratified the agreement by an act passed February 26, 1834. Congress approved the agreement by an act passed June 28, 1834.

* Charles Carroll of Carrollton, who died November 14, 1832, in his ninety-sixth year.

In performing this most difficult duty, which we owe alike to those whom we have succeeded, to our own age, and to posterity, we are happily not without a guide. The history of their lives, and their recorded precepts are full of instruction, in regard not only to the great principles which lie at the foundation of our government, but to the practical rules concerning the administration of its affairs. While we enjoy the civil and political rights inherited from them let us emulate their devoted patriotism; let us cultivate a spirit of forbearance and conciliation amid the conflicts which, as human nature is constituted, will inevitably arise from the discordant views of men with regard to the various interests of a great people; and let us continue our efforts, to the extent of our abilities, to carry forward our country in the direction indicated by them, to a degree of prosperity and renown which shall equal their fondest anticipations.

Undervaluing the virtue and intelligence of the people, the enemies of our free government have constantly predicted, and some of its true friends have feared, that it would ere long be impaired, perhaps overthrown, by popular convulsions. Experience has thus far disappointed the hopes of the one, and greatly allayed the apprehensions of the other. As a nation, we have already encountered the severest trials, and our free institutions remain unimpaired. Some, entertaining a disparaging opinion of the virtue of the people, have deemed it necessary that those who are intrusted with public affairs, should be as far removed as possible from the influence of fluctuations in the popular will; and as their theory of administering the government required large powers, they have not hesitated to derive them from a latitudinarian construction of the constitution. Others have placed a confident reliance on the judgment of the people, regarding them as possessed not only of the sovereign power, but of a perfect right to have their wishes

respected by their public servants, and the authority conferred on them confined within the limits fixed in the instrument, by which that authority is delegated. The difference in these views has been, in my opinion, the principal cause of our party divisions. Those who entertained the views last described considered the elevation of our present patriotic chief magistrate of the United States, as a measure necessary to bring back the administration of our government to its true constitutional principles. Nearly every beneficial result anticipated in that event has been realized. Our foreign relations, involved as they were in the most serious embarrassments, have been placed in the best possible condition; our negotiations in almost every case brought, by persevering efforts and consummate ability, to a successful termination, and our country exalted to a higher consideration with foreign powers, than it has enjoyed at any former period.

The management of its internal affairs, not less difficult than that of its foreign relations, has called forth an equal display of wisdom and talent, and has been conducted with equal success. Abuses in the subordinate departments of the government have been corrected; its fiscal resources have been husbanded, and the public debt nearly extinguished; legislation, of doubtful authority and of equally doubtful utility, has been arrested by the salutary exercise of a high constitutional prerogative. So far as depended on the executive department, all that prudence required or wisdom could suggest has been done, to remove the causes of local excitement and to inspire general content; and a system of measures suited to our social condition, and congenial to the principles of our political institutions, has been fearlessly recommended to Congress for their adoption. If such an administration had not secured to itself the continuance of the public confidence, fears might well have been entertained for the stability of republican governments. Sustained as it has been against a combination

of interests, the coalition of hostile parties, the use of extraordinary means, and the exertion of violent efforts, the auspicious result of the late contest may justly be regarded as a triumphant refutation of the fallacy, that the people are unworthy of being trusted with the unlimited control of their political affairs, and an unanswerable argument in favor of the durability of a free government, confided to the guardianship of intelligent and virtuous citizens.

I perform an unpleasant duty in laying before you, at the request of the Governor of South Carolina, the proceedings of a recent convention of the people of that State. In expressing my unequivocal disapprobation of those proceedings, and my deep regret that a State which, in all past time, has so nobly performed her duty to the confederacy of which she is a member, should thus attempt to exonerate her citizens from the operation of the laws of the United States, I am persuaded I do but speak the universal sentiment of the people of this State. For the first time in the history of this republic, a claim has been set up, on the justly cherished ground of State rights, which, if well founded, belongs equally to all the members of the Union, but which is repudiated by all, and by none more earnestly than by those members, who, in respect to the evils complained of, and for the redress of which the claim in question has been asserted, stand in precisely the same situation with the State of South Carolina. Whatever, therefore, may be the nature and extent of the alleged grievances, I do not go too far, I trust, in assuming that the remedy to which our fellow citizens of South Carolina have resorted, and on the strength of which they are apparently preparing for themselves the most fearful of all responsibilities, is not merely unauthorized by the Constitution of the United States, but fatally repugnant to all the objects for which it was framed. Let their doctrine be once established, and the union of these States is destroyed forever.

From a state of things so novel in its character, and so ruinous in its tendencies, duties of the highest importance, increasing in interest and delicacy, according to the course of events, may devolve on us as one of the members of the sacred union of these States. Whatever embarrassments may arise, I feel confident that the people and government of this State will support the Executive of the United States in all measures which are proper, and may be necessary for the preservation of the Union, and for the due execution of the laws, and will faithfully perform all their duties resulting from our national compact.

But I should be unmindful of the just and generous character of our constituents, if in expressing what I believe to be their sentiments, I did not at the same time disclaim for New York all desire to aggrandize herself at the expense of her sister states, or to pervert to local purposes a system of government intended for the common benefit of all. She cherishes the union of these States. She knows what it cost. She estimates, as highly as any other member, its value, both on account of the benefits it confers and the evils it averts; and it is not to be doubted, that she would make any sacrifice which would be considered reasonable to preserve it. Though its destruction would not certainly be more calamitous to her than to others, yet none will adhere to it longer or exceed her in great and generous efforts to sustain it. Without it, she might be prosperous; but her highest prosperity would be embittered by regrets on account of the blessings lost to herself, her associates, and the world; with it, there is no policy that would be long pursued by a people so virtuous and enlightened as those of the United States, under which she could fail to be an important and flourishing commonwealth. If, therefore, the operation of existing laws be adverse to these views, I am persuaded New York will consent to such a modification of them as will remove all just ground of complaint, and afford substantial relief to every real grievance.

The duty of deciding upon these points is committed, as far as our State has a voice in the discussion, to those who represent us in the Congress of the United States. To the wisdom and patriotism of that body, to the firmness and well-tried virtue of the President, and to the gracious care of a beneficent Providence, we may confidently commit the issue of the deeply interesting questions presented by the unprecedented state of the country.[13]

One of the duties which will require your earliest action, is the selection of a citizen to fill the vacancy in the Senate of the United States, created by my resignation of the office of senator, which I hereby present to you. In the portents of the times you will find additional motives for exercising much care and consideration, in making this selection. Not only the general policy, but many of the particular measures of the national government exert an important influence upon the diversified pursuits of our constituents. How far this influence shall be beneficial, may depend in no inconsiderable degree, upon the character and capacity of those who represent us in the Senate of the United States.[14]

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13 See Assembly Document, 1833, No. 3, and Senate Document No. 2, for the proceedings of the South Carolina Convention, including the nullification ordinance, an address to the people of that State, and an address to the people of the other States. See also special messages showing action by other States.

The Legislature adopted a report on the subject of the nullification proceedings by South Carolina, concluding with resolutions approving the action of the President in enforcing the laws, and pledging the aid of this State in any measures which might be deemed necessary to sustain the authority of the federal government. The resolutions included the following:

"That we regard the right of a single State to make void within its limits the laws of the United States, as set forth in the ordinance of South Carolina, as wholly unauthorized by the Constitution of the United States, and in its tendency subversive of the Union and the government thereof.

That we do dissent from the doctrine that a single State has a right to withdraw itself from the Union against the wishes of its co-States, whenever in its sole judgment the acts of the Federal Government shall be such as to justify the step."

14 Silas Wright, Jr., was chosen to succeed Governor Marcy as United States senator.

On passing from one station to the responsible duties of another, I trust I may so far indulge in the expression of my feelings as to say, that while I have been very sensible of the favor, received in repeated instances from the Legislature, and recently from the people of this State, I have been at the same time equally diffident of my ability to discharge the trusts so liberally confided to me, in a manner corresponding to my own wishes, or the expectations of my fellow citizens. A lively sense of gratitude will not, I venture to assert, be the least efficient motive in disposing me to devote myself to the welfare of the State.

My earnest endeavor shall be, to do everything falling within the sphere of the executive powers, that my humble abilities will enable me to do, to preserve the sovereign rights of the State, to secure the due execution of the laws, to sustain our invaluable institutions, to develop the vast and exhaustless resources, with which we are liberally supplied by nature, and to carry us on in the progress of moral, intellectual and physical improvement, wisely begun and so prosperously continued that we have already become, under the operation of the free principles of our government, and with the favorable regard of Him who controls the destiny of nations, a great, a happy, and a powerful commonwealth.

W. L. MARCY.

Albany, January 1st, 1833.

SPECIAL MESSAGES.

January 15. To the Legislature: Announcing the appointment by Governor Throop of Jacob S. Bogert as Commissary General in place of Alexander Muir, deceased.[15]

Under the second Constitution, which was then in force, the Commissary General was to be appointed by the Senate and Assembly on joint ballot, but by the Revised Statutes a

[15] Henry Arcularius was appointed Commissary General by the Legislature in place of Alexander Muir, deceased.

vacancy occurring during the recess of the Legislature might be filled by the Governor and the appointee could hold until the office was regularly filled by the Legislature.

January 16. To the Assembly: Transmitting a resolution adopted by the Legislature of Illinois, recommending federal legislation for the more perfect organization of the state militia. [See note 5.]

January 19. To the Assembly: Transmitting the annual report of the Adjutant General.

January 24. To the Assembly:

"GENTLEMEN.—I have received resolutions passed by the Legislatures of several of the States, containing requests to have them laid before the Legislature of this State.

In compliance with such request, I herewith transmit to you, First, several resolutions of the Legislature of the State of Pennsylvania, 'relative to the union of the States and the Constitution of the United States.'

Second, resolutions of the State of Georgia, approving of an opinion expressed by the General Assembly of the State of Tennessee, against the exercise of the power assumed by Congress, to appropriate money from the treasury of the United States to be expended on works of internal improvement, and also denying that the General Government is possessed of such power:

Third, a resolution of the Legislature of the State of Georgia, making application to Congress for calling a convention of the people to amend the Constitution of the United States in certain particulars specified in the proceedings accompanying the said resolutions:

Fourth, resolutions of the State of South Carolina, recommending a convention to consider and determine questions of disputed power, which have arisen between the States of the confederacy and the General Government.

W. L. MARCY."

Albany, Jan. 23, 1833.

The Pennsylvania resolutions were as follows:

"*Resolved,* By the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, That the Constitution of the United States, and the laws of the United States made in pursuance of the Constitution, are the supreme law of the land, to which every citizen of the United States owes obedience, and that no authority whatever can release him from his obligation to obey, or require him to take any oath, or enter into any engagement inconsistent with such obligation; and that any pretension on the part of a State, or any portion thereof, so to release any citizen of the United States, or so to require of him, is unconstitutional and without the least foundation of right, and can afford neither shelter nor excuse for offences he may commit against the laws of the United States.

Resolved, That no portion of the citizens of the United States have a rightful power to render invalid an act of the Congress of the United States, duly made by the people's representatives, and approved by the Executive, in the mode prescribed by the Constitution, nor to nullify the same, either generally or within particular districts, but that every such act of Congress continues in full force everywhere within the United States, notwithstanding any such asserted nullification, and all persons who resist its execution, offend against the Constitution and laws of the United States, and are liable to prosecution and punishment for such offence.

Resolved, That no State has a right to withdraw from the Union and to declare itself independent of it, and that every attempt to do so would be a virtual infraction of the Constitution of the United States, justifying and requiring the use of constitutional measures to suppress it.

Resolved, That the faithful execution of all laws of the United States, made in the mode prescribed by the Constitution, is a duty enjoined upon the President of the United States, in the constitutional discharge of which he is entitled to, and ought to receive, the aid and support of every citizen of the Union.

Resolved, That it is the clear and indisputable right of Congress to impose duties upon importations, and of the Government of the United States to collect the duties pay-

able by law upon goods imported into every part of the Union, and that every resistance to the collection of the same is an offence against the Constitution and laws of the United States,* and that the offenders are liable to prosecution and punishment for such offence.

Resolved, That in enforcing, by all constitutional means, the laws passed by Congress for imposing and collecting duties upon goods imported into the United States, and all other acts of the Congress of the United States, and in bringing to punishment all persons who, under any pretence, may offer resistance to them, the Commonwealth of Pennsylvania will, if necessary, aid and assist the government of the United States by all the means in her power.

Resolved, That we pledge ourselves, jointly and individually, to sustain the Chief Magistrate of the United States, in all constitutional measures calculated to preserve and perpetuate the Union of the States."

The Georgia resolutions concurred in the action taken by the Tennessee Legislature, expressing its disapproval of the policy of "appropriating money out of the treasury of the United States, and in subscribing for stock under state corporations."

Another Georgia resolution declared that the federal constitution needed amendment in the following particulars:

"That the principle involved in a tariff for the direct protection of domestic industry may be settled.

That a system of federal taxation may be established, which shall be equal in its operation upon the whole people, and in all sections of the country."

Other Georgia resolutions related to state rights, the federal judiciary, banks, appropriations for internal improvements, the disposition of surplus revenue and public lands, the popular election of president and vice-president, with limitation of official tenure, and the settlement of Indian rights.

The South Carolina resolution is sufficiently indicated in the Governor's message.

* U. S. Const. art. 1, § 8, clause 1.

February 7. To the Assembly:

"GENTLEMEN.—I herewith transmit to you,

1st. A preamble, and resolutions, passed by the Legislature of the State of Indiana, relative to the proceedings of a late convention of South Carolina, and to the President's proclamation in relation thereto.

2d. A resolution of the State of New Hampshire, approbatory of the President's message, on the bill to re-charter the bank of the United States, and of the measures generally of the present administration of the general government.

3d. Resolutions of the Legislature of North Carolina, expressing their sentiments against the doctrine of nullification, as avowed by the State of South Carolina, and recommending to their Senators and Representatives in Congress to use all constitutional means to adjust the controversy between the State of South Carolina and the general government.

4th. Resolutions of the State of Massachusetts, in favor of protecting the domestic industry of the country, and against the bill now pending in Congress, relative to the tariff.

The proceedings above referred to, were transmitted to the Governor of this State, pursuant to a direction contained in them; but they are not accompanied with any expressed request to have them laid before the Legislature.

I have, however, presumed that such a disposition of them was expected by the legislative bodies which directed them to be sent to me. I therefore submit them to your consideration.

W. L. MARCY."

February 5, 1833.

See Assembly Document, 1833, No. 115.

February 12. To the Assembly: Transmitting the following preamble and resolutions adopted by the Legislature of Delaware:

"*Whereas* a Convention of the people of the State of South Carolina has undertaken by an Ordinance passed in November last, to declare certain acts of Congress for imposing duties and imposts on the importation of foreign commodities, null and void and not binding on the State, its officers and citizens; and has prohibited the enforcement of those laws within the limits of that State, and has also prohibited any appeal from the decisions of the State courts, wherein the authority of the Ordinance shall be drawn in question, to the United States' Courts: And

Whereas, this measure has been communicated by order of the Convention to the Governor of this State, for the purpose of being laid before the Legislature, and it is expedient that the sense of the people of this State should be expressed in relation thereto; Therefore,

Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met, That the Constitution of the United States is not a treaty or compact between sovereign States, but a form of Government emanating from, and established by, the authority of the people of the United States of America.

Resolved, That the Government of the United States, although one of limited powers, is supreme within its sphere, and that the people of the United States owe to it an allegiance which cannot be withdrawn, either by individuals or masses of individuals, without its consent.

Resolved, That the Supreme Court of the United States is the only and proper tribunal for the settlement, in the last resort, of controversies in relation to the Constitution and the laws of Congress.

Resolved, That if in the regular action of the Government, mischief of any kind be produced, the proper remedy is to be found in the elective franchise, and the responsibility of its officers.

Resolved, That in cases of gross and intolerable oppression, which in a government like that of the United States, can be little else than a hypothesis, the natural right of self-defence remains; but which must in the nature of things, be an appeal to arms, and subject to all the conse-

quences of resistance to the constituted authorities. In such a case the measure is revolutionary, and the result remains in the hands of the Almighty.

Resolved, That the Convention of South Carolina can have no other or greater right to annul or resist the laws of Congress, than any assemblage of an equal number of individuals in any part of the United States; nor can any assemblage, however large, have any other or greater right, for such a purpose, than belongs to each individual citizen, considered as a constitutional measure.

Resolved, That it is a subject of regret, that such a delusion should exist among any portion of the citizens of that State, towards whom the people of this State entertain the kindest feelings, with whom they stood side by side in the war of the revolution, and in whose defence their blood was freely spilt. But if the measure which has been adopted is intended as the precursor of resistance to the government, the people of Delaware will not falter in their allegiance, but will be found now as then, true to their country and its government.

Resolved, That we cordially respond to the sentiments on this subject, contained in the able proclamation of the President of the United States, and shall be at all times prepared to support the Government in the exercise of its constitutional rights, and in the discharge of its constitutional duties."

Other resolutions denied the power of the people to procure amendments to the federal constitution by means of a convention not called as prescribed by the Constitution itself, and expressed the opinion that Congress should not at that time call a convention to consider amendments to the constitution.

February 25. To the Assembly: Transmitting resolutions adopted by the legislature of Virginia, requesting and entreating South Carolina to rescind the nullification ordinance recently adopted by a convention held in that state, and also requesting and entreating Congress so to modify the tariff acts as to provide for a gradual but speedy reduction of revenue. Other resolutions reasserted the doctrine of State rights or State sovereignty announced in 1798, but

denied that the doctrine justified either the nullification ordinance of South Carolina or all the principles announced by President Jackson in his proclamation of December 10, 1832.

The Governor also transmitted resolutions adopted by the Legislature of New Jersey, protesting against the nullification ordinance adopted by the South Carolina convention November 24, 1832, and declaring that "all the states of this union make one indivisible nation, united in prosperity and adversity, in peace as in war, by the sacred and indissoluble bond of their union." The resolutions also pledged the state to support the general government in maintaining the integrity of the Union and the supremacy of national law.

A resolution was also transmitted from Delaware recommending federal legislation in relation to the militia.

March 12. To the Assembly:

"GENTLEMEN.—I herewith transmit to you a preamble and resolutions passed by the Legislature of the State of Ohio, on the subject of the South Carolina Ordinance. Also a resolution of the same Legislature, expressing its opinion of the inexpediency of calling a convention to amend the Constitution of the United States. Also a resolution of the same body approbatory of the proclamation of the President of the United States, of the 10th of December last.

W. L. MARCY."

Albany, March 11, 1833.

March 19. To the Assembly: Transmitting resolutions adopted by the Legislature of Massachusetts denying the power of South Carolina to adopt and enforce the nullification ordinance of November, 1832, sustaining the President in his purpose to enforce the laws of Congress, and entreating South Carolina to refrain from any further resistance to the operations of the general government.

Mississippi also protested against the South Carolina nullification ordinance, and assured the President of its support in his efforts to enforce the laws enacted by Congress.

March 26. To the Assembly: Transmitting a series of resolutions adopted by the legislature of Alabama, declaring its adhesion to the general government, but protesting against the protective tariff policy, and recommending a general convention to consider questions relating to amendments of the federal constitution.

March 28. To the Assembly: Transmitting resolutions adopted by the Legislature of Maine, protesting against the South Carolina nullification ordinance, declaring that the tariff laws, so far as intended as measures of protection of American manufactures or industries "are unequal in their operation, and contrary to the spirit, true intent and meaning of the federal compact," recommending that tariff be imposed for revenue only; and tendering to the President the support of the State in his efforts to maintain the laws.

April 4. To the Assembly: Transmitting resolutions adopted by the Legislature of Massachusetts, disapproving the South Carolina and Georgia propositions for a convention to consider proposed changes in the federal constitution. Also transmitting a similar resolution from Mississippi as to the Georgia proposition.

April 22. To the Assembly: Transmitting a resolution adopted by the legislature of Massachusetts relative to public lands, among other things approving a bill passed by Congress for the distribution of the proceeds of public lands among the states on the basis of representative population.

April 25. To the Assembly:

Veto of a bill entitled "An act relative to cullers of staves and heading in the county of Rensselaer."

The bill related to details of inspection, and the governor considered only questions of policy in relation to this in-

dustry. No principle of general application nor constitutional question was involved in the discussion, and the text of the veto is therefore omitted.

The bill was not passed over the veto.

April 30. The Legislature adjourned without day.

TAXATION AND CANAL DEVELOPMENT.

A committee of the Senate considered the subject of taxation, (*ante,* p. 413) both in its relation to the canal policy and canal development, and also in its relation to general administration. The committee did not encourage the proposition to engage in canal construction to an extent urged by many of its advocates, including a canal system covering a greater part of the state, but believed that the system should be extended only as rapidly as the development of the State would warrant, and as might conduce to the general welfare, taking into consideration the great variety of climate, soil and topography.

Considering the general question of taxation, the committee said that "indirect taxes bear less equally upon all than direct, and burthen the poor more heavily than the rich; the laborer's family would pay as much duty on the consumption of his salt, tea and canal flour, (if the consumer paid the latter) as his more wealthy employer; and it is on the intelligence and vigilance of the latter class, when duly burthened, that we must rely to watch and check the representatives in the disbursement of their contributions." "Notwithstanding the frequent remark that direct taxes are odious, and are paid grudgingly, the committee feel bound to defend the public against an imputation so unjust and unfounded; they have no repugnance to the payment of taxes when just and necessary, and no burthens growing out of the social compact are borne more cheerfully or discharged more promptly than direct taxes." "Direct taxes are odious only when they are unjust or unnecessary."

"Instead of deploring the necessity of a resort to direct taxes, the committee consider it a subject of gratulation, and to be hailed as an auspicious event, that the condition of our State is such that we can adopt this salutary method of raising revenue; a method, while it disturbs no branch of industry, excites no local jealousies or sectional conflicts, deals out exact and equal justice to all, and holds the representative to his duty by the strong bond of self interest.

It is true a majority of the State may impose a local and indirect tax on a minority for the benefit of all; may even draw the whole revenues from a single article of domestic manufacture, and a single and favorite mode of transferring the title to merchandise," but it may not be wise even if just to encourage these sectional conflicts in a "fiscal warfare."

The committee recommended that our canals be "left free to perform their legitimate office, by pushing our wide commerce to its utmost limit, and by competing triumphantly with all their rivals; and that our salt and auction duties should be freed from constitutional restraint, and made subject to the control of just and liberal legislation. For revenue they recommend that reliance be had on a direct appeal to a people highly intelligent and prosperous; an appeal which, if made in the spirit of just and equal laws, can never be made in vain."

The committee further recommended a tax of one mill on a dollar for the purpose of raising revenue for personal needs, and introduced a bill accordingly, but it was not passed.

By Chapter 250, passed April 27, "all debts owing by inhabitants of this State, to persons not residing therein, for the purchase of any real estate, or secured by a mortgage on real estate, shall be deemed personal property within the town and county where the debtor resides, and as such, shall be liable to taxation in the same manner, and to the same extent, as the personal estate of citizens of this state."

WILLIAM L. MARCY, Governor.

ANNUAL MESSAGE:

FELLOW-CITIZENS OF THE SENATE AND ASSEMBLY.—In performing the duty which requires me at this time to submit to your consideration the condition of the State, I feel peculiar gratification in being able to assure you that it is unusually prosperous.

As a member of the confederacy, we have no cause of alarm at any encroachment on our rights as a sovereign State. The general government is moving in the proper sphere of its delegated powers, diligent to understand the interests committed to its charge, and devoted to the duties essential to the general security of the nation. Practising upon its avowed principle of asking nothing that is not clearly right, and submitting to nothing that is wrong, it continues to maintain a friendly intercourse with all other nations, on terms of fair reciprocity.

The extraordinary attitude, assumed at the commencement of the last year, by the State of South Carolina, in regard to the authority of the federal government, excited some apprehensions for the peace, if not for the stability, of the Union, and imposed upon that government exceedingly delicate and embarrassing duties. We have great reason to rejoice that our national affairs were in the hands of those who were peculiarly fitted for such a crisis, and who were enabled by their wisdom, firmness and moderation, to conduct this unhappy controversy to a peaceful issue, without conceding any right belonging to the general government, or giving any countenance to the novel and dangerous doctrine of nullification.

Between this State and New Jersey a dispute has for a long time existed, concerning boundaries and jurisdiction.

Several attempts have been heretofore made, to adjust this controversy, in an amicable way; but they had all terminated unsuccessfully, and proceedings were instituted, on the part of New Jersey, in the Supreme Court of the United States, to bring it to a judicial decision. The mutual desire of the citizens of the two States to preserve harmony between them, seemed to leave the way still open for an honorable compromise. The executive of each State was last year authorized to appoint commissioners to effect this object. These commissioners have agreed upon terms of adjustment, which they deem to be equitable and mutually beneficial to the parties. This agreement is not obligatory on either State, until it is confirmed by the Legislature of each, and approved by Congress. It is herewith transmitted for your ratification, if it shall be found, as I believe it will be, compatible with our honor and our interests.* The Union is to be preserved and strengthened by concord among its members. The sentiments of patriotism, as well as a regard to our local interests, will inspire you with a desire to remove the only known cause that can disturb our friendly relations with any of the States.

From this view of our external relations, permit me to direct your attention to our internal affairs. To the spirit of our free government, to the wise legislation of your predecessors, but, above all, to the kind regards of a gracious Providence, we are indebted for our present unexampled prosperity. No pestilence has been permitted, within the last year, to visit our citizens; our agricultural products have been abundant; manufacturing establishments have multiplied in all parts of the State; commerce has expanded beyond its former limits; enterprize is exerting its energies in all directions; and the gratifying evidences of moral and intellectual improvement are everywhere around us. Let it not, however, be supposed that this fulness of pros-

* For the ratification of the New Jersey boundary agreement, see 1833, note 12, *ante*, p. 424.

perity has superseded the labors of legislation. Evils exist that require correction; and new wants are constantly disclosed, that cannot be fully supplied without your aid.

Every wise system of municipal laws necessarily contains within itself an adequate provision for the due execution of them. Laws are rendered effective only by the agency of public officers. The judiciary is an essential branch of all governments; to those of liberal principles it is, and ever will be, an object of much solicitude, and the more so in proportion to the sacred regard which is cherished for personal security and the rights of property. It must be accommodated to the duties devolved upon it. When we take into view the rapid increase of this State in population, and the still more rapid augmentation of its business transactions, both of which greatly multiply the labors of the judiciary, we must, I think, be convinced that our present establishment, though adequate to the public exigencies when first organized, now needs to be enlarged. Both the ability and the diligence of our higher courts are admitted; yet the business in them has so greatly increased, and the prospect of its further accumulation is so certain, that it has become your duty to deliberate on the means of affording relief. It is not so much to subserve the convenience of the courts overburdened with business, as to relieve parties from expense and loss, that such a measure has become expedient. Delay is not only attended with additional costs, but in many cases it is a denial of justice.

The organization of a vice-chancellor's court in the city of New York, has fulfilled the public expectations of its usefulness. It is suggested whether one or two other similar courts, in other parts of the State, might not prove useful auxiliaries, not only to the Court of Chancery, but to the Supreme Court. To such courts the equity business of the circuit judges might be assigned; and most of the interlocutory proceedings in the Supreme Court might be transferred to these judges. The pressure of business is on the

Court of Chancery and the Supreme Court, and on a few of the circuit judges, in consequence of their chancery business. If two vice-chancellor's courts should be organized, it might not be necessary to increase the number of judicial officers. Two of the circuit judges might be appointed to preside in them, and the number of circuits reduced to six. It is believed that six judges would be able to perform all the circuit duties, together with such interlocutory business as could be properly devolved on them.

If upon mature deliberation, this measure should not be deemed a proper, or an effectual remedy for the public inconvenience, there appears to be no other course left, but to amend the Constitution, and thereby increase the number of judges, or create other courts to participate in the business of those which now possess general jurisdiction.[a]

Judges, like all other public servants, have certainly a just claim to a fair allowance for their official services; and in settling it, due consideration should be given as well to the qualifications required for such stations, as to the arduous and responsible duties imposed by them. It is true that judicial offices are highly honorable, and are generally aspired to with better motives than a regard to the measure of compensation; but this circumstance does not render an adequate reward to judges less an act of justice, or a dictate of sound policy.

Economy is the virtue of republican governments, but it is as distinguishable from parsimony as from profusion. It requires that faithful public services should be fully, and no more than fully, paid; and it is as much the duty of the Legislature to bring to this standard, salaries that are too low, as those that are too high. In forming an opinion as to the compensation to be given to judges, it is proper to look at all the circumstances connected with the subject; to their situation, which necessarily debars them from all private pursuits; to their qualifications, which result from a

[a] Const. 1821, art. 5, § 5.

union of moral worth, high intellectual powers, and extensive acquirements; to the services they are required to perform, which, in this State, are more important and laborious than those imposed upon the judiciary of any other State. If, in addition to these considerations, we compare the present compensation of the judges in our higher courts, with the salaries given to such functionaries in other States, or with the salaries formerly given here, without the imputation of extravagance, we are, I think, necessarily brought to the conclusion that our judges are inadequately paid. I should neglect what I think due to an important department of the government, if I omitted to invite you to deliberate on this subject.[1]

The business transactions of this State are almost wholly founded on credits. It should, therefore, be the object of legislation to provide for the faithful execution of contracts. In 1831, an important change was made in the law on this subject, by abolishing imprisonment in certain cases. This change has, to some extent, excited dissatisfaction among the people; but most of it, I believe, is to be ascribed rather to the defects of the law, than to its principle. Its real object is in accordance with the spirit of the age. No reasonable objection can be urged against exempting the honest debtor, who is without the ability to pay, from imprisonment; but great care should be taken to prevent such a wholesome provision of law from becoming a refuge for dishonesty and fraud. It was scarcely to be expected, in such a case, that all the safeguards against abuses and perversions could have been provided, without the light of experience. This law has been nearly two years in operation, and its prominent defects are now developed, and I

[1] Salaries of judges and other topics relating to the judiciary received special consideration in both Houses, but no law was enacted on the subject of salaries. A Senate committee recommended a constitutional amendment, providing for two additional justices of the Supreme Court. There were various recommendations relating to judges, and the organization of the higher courts. For an act fixing judicial salaries, see L. 1835, chap. 19.

trust your attention will be carefully directed to devising adequate remedies for them.[2]

Our penitentiary establishments are objects of great public interest, and must ever draw towards them the anxious regards of the Legislature. The improvements by this State in prison discipline, have been imitated by other states, and have attracted the attention of several governments in Europe. The commissioners sent from abroad to examine our penitentiaries, and ascertain their practical operation, have bestowed on both high commendation. By means of these establishments, we have been enabled to meliorate our criminal code, with safety to the rights of persons and of property, and in a great measure to relieve the people from a heavy annual burden for the support of convicts.

The operations of the state prisons continue to present favorable results. The number of persons received into them during the last year, is less than that of the previous year; and the avails of the labor performed by the convicts have defrayed the ordinary expenses of these establishments, and yielded a surplus income of eleven thousand eight hundred and eighty dollars and thirty-one cents.

It was feared that the diminution of the number of convicts in 1832, from that of 1831, was to be ascribed to the effects of the cholera, which had interrupted some of the courts; but the reports of the past year have removed this apprehension, and proved, that while our population is rapidly increasing, crimes punishable in the State prisons are decreasing. The whole number of convicts in the Auburn prison on the first day of December last, was six hundred and seventy-two. One hundred and seventy-one had then been received since the first day of January last, which

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2 Petitions for the repeal of the act abolishing imprisonment for debt were presented to the Legislature, and also remonstrances against such repeal. A committee of the Assembly considered the matter, and reported a bill, which it was believed would remedy the evils complained of without destroying the principle of the act, but no bill was passed.

exceeds by thirty-nine the number received in the previous year. The whole number of convicts in the Mount Pleasant prison on the first day of December last, was eight hundred and thirty-three; and the number received previous to that date, in 1833, was two hundred and nineteen, which is seventy less than the number received in the preceding year.

The earnings of the convicts in the Mount Pleasant prison, during the last fiscal year, which closed on the thirtieth of September, were sixty-seven thousand five hundred and forty-eight dollars and sixty-five cents; which exceeds the ordinary expenses of that establishment, not including therein the charge of the corporation of New York for keeping the female convicts, three thousand two hundred and fifty-five dollars and twenty-six cents. A part of this surplus has been expended in building a range of workshops, two hundred and forty feet in length. No appropriation, either for the support of this prison, or for any additional improvements to it, will be required for the current year.

The earnings of the convicts in the Auburn prison, for the last fiscal year, were forty-nine thousand six hundred and sixty-five dollars and fifty cents. This sum produces a surplus, after deducting the ordinary expenses of the prison, of eight thousand six hundred and twenty-five dollars and five cents. Some portion of this surplus has been expended in altering and repairing the south wing of this prison. This work was deemed necessary for the preservation of the edifice, and for accommodating the establishment with a chapel and mess room. From the representations of the officers, and from personal observation, I am convinced that a regard to the safety of this prison, and to the accommodation of its business, requires that its enclosure should be considerably enlarged. This improvement cannot be made without your authority, and will prob-

ably involve an expenditure beyond the surplus income of the establishment.[3]

Although we have done much for the improvement of prison discipline, much more remains to be done. There is one class of criminals to which it cannot be extended without another establishment. Every year's experience confirms the propriety of the repeated and urgent recommendations which have been made to your predecessors, in favor of providing a separate prison for female convicts. The number of these is now fifty-three. Twenty-three of them are in the Auburn prison; but the salutary influence of its admirable discipline cannot be fully extended to them for the want of proper accommodations. The remaining thirty are confined at Bellevue in the city of New York, at the annual charge of one hundred dollars for each convict, paid by the State to that city. Even economy, which is less to be regarded in this matter than other considerations, would be promoted by such an establishment. Most of the labor of erecting it, might be performed by the convicts of the Mount Pleasant and the Auburn prisons. I earnestly invite your attention to this subject.[4]

Whatever diminishes minor offences will also diminish those of a higher grade; we ought, therefore, to apply our correctives to the incipient steps of transgression, with the double view of preventing crimes, and of reforming offenders. If long experience has taught any one lesson on this subject more clearly than another, it is that the association of criminals in idleness, with opportunities of unrestrained intercourse, renders reformation almost hopeless, and mutual contamination nearly certain.

The persons convicted of minor offences, are more than three times as numerous as the state prison convicts; and

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[3] Chapter 146, passed April 22, authorized the purchase of thirteen acres of additional land for the use of Auburn Prison, including the extension of the prison yard, and the erection of workshops and other buildings.

[4] A Senate committee introduced a bill for a separate prison for women, but it was not passed. A law on this subject was passed in 1835.

more than half of them are sentenced to be imprisoned in the county jails. As places of punishment, jails are much more objectionable than the state prisons were before their discipline was improved. Until establishments for punishing these offenders are provided, to which the salutary discipline of the state prisons can be extended, it is in vain to expect any considerable diminution of crimes, either of the lower or higher grade.

There is no institution partaking of the character of a penitentiary, that can be regarded with so much satisfaction as the House of Refuge for juvenile delinquents in the city of New York. The benevolent and humane individuals to whom this institution owes its existence, and who have generously devoted their labor and means to rear up and sustain it, have not been disappointed in the only reward they expected — the satisfaction of having been instrumental in rescuing many fellow beings from misery and crime, and turning them into the path of virtue and usefulness. This institution admirably combines the advantages of education and moral instruction, with a preparation for business pursuits. Its guardian care does not cease with its direct control over these delinquents; it follows them into society, and secures them from relapsing into criminal conduct by placing them in situations where they can, not only obtain a livelihood, but enjoy the ordinary means of becoming useful citizens.

It has been satisfactorily ascertained that most of those who have gone from this institution, have since pursued a virtuous course of life, and many of them are already established in business with the fairest prospects of success. This happy result is doubtless to be attributed, in a great measure, to the supervision over them which extends beyond the period of their actual imprisonment, and provides for them a proper employment. I am persuaded that some assistance of this kind afforded to convicts when first discharged from the state prisons, would, in many instances,

prevent their relapses into crime. The House of Refuge now contains two hundred and thirty-three inmates; but it never has had as large a number as it could accommodate. This, I am sure, would not be the case, if magistrates who have the power to send juvenile delinquents to it, were fully apprised of the decided advantages of its discipline over any other mode of punishment. The managers of this establishment are making laudable efforts to enlarge it, so as to accommodate colored children; but they have not yet been able to raise the means required for this object. If they should be obliged to solicit aid from the Legislature, the merits of the application will entitle it to a favorable consideration.

There are two institutions in this State for the instruction of the deaf and dumb — The New York Asylum, and the Central Asylum at Canajoharie. The number of pupils in both is one hundred and sixty-five. One hundred and thirty-four of them are in the school at New York. Ninety-six of these and twenty-four in the Central Asylum at Canajoharie are educated by the State at an annual expense of fourteen thousand four hundred dollars.

By an act passed in 1822, the supervisors are authorized in certain cases, to select from their respective counties indigent mutes, and send them to these institutions, which are required to instruct them on such terms as the State pupils are received. This authority has not been exercised by any of the counties except those of New York and Montgomery; not for the want of fit objects, but probably from an unwillingness to levy the expenses that would be thereby incurred. It is worthy of your consideration, whether the exercise of this authority which is now optional with the supervisors, might not be properly made an imperative duty.[5]

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[5] Chapter 67, passed April 3, appropriated $5000 annually for five years for the New York Institution for the Instruction of the Deaf and Dumb.

Interesting as is this class of persons to our humane feelings and claiming as they certainly do your sympathy, and a liberal degree of your care and patronage, there is another class, larger in number, and still more unfortunate in condition, who have a rightful claim to a greater share of your compassion and an equally liberal measure of your assistance. I refer to the insane — and more particularly, to the insane poor. We should be deaf to the most powerful appeal of suffering humanity, and wanting in gratitude to God, who has endowed us with the faculty of reason, and blessed us with abundant means of administering to the wants of others, if we did not use both, for the comfort, and, to every practicable extent, for the cure of those who are deprived of these gifts. If, indeed, the diseases of the mind lay beyond the reach of human agency, it would still be our duty to afford these sufferers all the comfort and consolation which could be enjoyed in such a forlorn condition. But recent experience has proved, that in a few cases only, is their doom irreversible. Medical science and mental philosophy have finally obtained an almost entire dominion over these maladies. There is, however, this peculiarity in the cases of insanity, that little hope of effecting a cure can be indulged, without the conveniences of proper institutions. The Asylum at Bloomingdale, under the management of the Governors of the New York Hospital, is the only establishment affording accommodations for insane patients, which has received any assistance from the public treasury. The State has already paid, for founding and supporting it, one hundred and seventy thousand dollars; and has made provision for an annual payment towards its support, of ten thousand dollars, until the year eighteen hundred and fifty-seven. It is however inadequate to the public wants. Besides, this institution is, in effect, closed to that class of insane patients presenting the strongest claims for your bounty,— to those who are unable to contribute to their own maintenance. Poverty is

sometimes the cause, and oftener the consequence, of mental derangement. For those who labor under this double affliction, nothing has been done specifically by the Legislature. By the census of 1825, it appears that there were then in this State, eight hundred and nineteen lunatics; and if the number has increased proportionably with the population, it cannot be less, at this time, than one thousand. Of these, seven hundred, at least, are paupers, and most of them utterly beyond all reasonable hope of recovery, without legislative aid. If anything were wanting to urge you to vigorous action on this subject, and call forth your patronage in behalf of these sufferers, it will be found in the well-authenticated fact, that of recent cases under the treatment of the best regulated asylums, eighty and sometimes ninety patients in an hundred, have been restored; and even those who have been long neglected and cruelly misused, are not in a hopeless state. If the victims of disordered intellects had not been deprived of the usual means of exciting public compassion, or if they could have come forth from the places of their confinement, to exhibit their deplorable condition to the public eye, I cannot believe that a provision for their relief would have been delayed to this late day. If the claims of humanity in this respect, have been disregarded, you have now the power, and I doubt not will feel the disposition, to satisfy them.[6]

The blind also, are another class of persons upon whom misfortune has laid a heavy hand, and who have a just claim to something more substantial than bare sympathy. Books have recently been made with embossed letters, whereby they are enabled, after a proper course of instruction, to read with considerable facility. By this ingenious contrivance, a new avenue is opened to their minds, and

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[6] In 1836, (chapter 82) provision was made for the appointment of commissioners to select a site for a State lunatic asylum. The act made no provision for the reception of inmates nor for administration. The asylum was located at Utica.

ampler means of knowledge brought within their reach. The number of persons suffering under the deprivation of sight, in this State, cannot be accurately estimated; but it is very considerable — sufficiently so, at least, to make their condition a subject worthy of your attention and kind regard.[7]

The establishment of county poor-houses has been generally attended with beneficial results. In them, paupers enjoy more comforts than could be extended to them in the former way of providing for their support. In most cases, they receive kind treatment; the able are put to work; the sick are carefully nursed, and well supplied with medical attendance; the young are furnished with the means of education, and enjoy opportunities of moral and religious instruction. The general burden of support has been greatly diminished wherever these houses have been established and properly managed. This system, particularly in what regards its police, is undoubtedly susceptible of some improvements. All who are received into these houses, should be treated with kindness; but the idle should not find them places of repose from labor, if they are able to work; nor should those who have been brought into them by their vices, be allowed opportunities for further indulgence.

There are many charitable and benevolent institutions in the State, and particularly in the city of New York, of great usefulness, which I would commend to your favorable regard. It is your duty to second individual efforts in building up and sustaining establishments, which are fitly designed to reclaim the vicious, to relieve the distressed, and to enlighten the ignorant.

From the consideration of subjects which relate to the relief of the unfortunate, I pass to those which regard

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[7] By chapter 316, passed May 6, 1834, the New York Institution for the Blind was authorized to receive and retain for five years from each Senate district four indigent blind persons between 8 and 25 years of age, who were to receive "literary or school" education, and also be instructed in some trade or employment.

public education and moral improvement. Republics should be ever mindful of this important truth, that to be free, man must be educated. Without a knowledge of his rights, he will never properly estimate nor long maintain them. Our enjoyments as individuals — our usefulness as members of society — our privileges as citizens of a free government, are all founded on education. These obvious propositions show at once the vast importance of our system of public instruction, and the necessity of so improving it as to give to its operations the utmost extension and the greatest efficacy. While we are reposing our hopes for the continuance of civil liberty upon the general intelligence of the people, it becomes our duty to see that this foundation is laid broad and deep. By providing an adequate fund for the support of common schools, the Legislature discharge but a part, and by far the least difficult part, of their duty, towards educating the people. They must secure its efficient application to the proper objects. In this respect, there is, in my judgment, a manifest defect in our system. Little as yet has been done to provide teachers properly trained for this pursuit. Without well qualified and skillful instructors, the amplest funds will prove comparatively useless. It is scarcely less important to establish a wise plan of supervision, not so much for the purpose of securing a faithful application of the public moneys, as to introduce the most effectual modes of teaching, and the best systems of instruction.[8]

The mere imposition of tasks, which are usually performed as an enforced duty, falls far short of the ends that should be aimed at. Emulation should be awakened in the minds of the pupils, and the acquisition of knowledge made a desirable object. When they once become sensible of the great advantages of education in the ordinary pursuits of

[8] The instruction of teachers was provided for by chapter 241, passed May 2. The revenue from the literature fund in excess of $12,000, was to be apportioned by the Regents to academies selected by them for the instruction of teachers.

life, and of the numerous enjoyments springing from the cultivation of their mental faculties, the difficulties of the work are nearly overcome, and the duties of the government are in a great measure performed. They then become their own teachers, and will seek opportunities, and furnish themselves with the means, of instruction.

Republican governments are the most deeply interested in the cause of education, and from them it is reasonable to expect vigorous efforts for the general dissemination of knowledge among the people; yet I regret to see, that in this respect, we fall far behind even some of the monarchies of Europe. Several of the German states, particularly Prussia, are doing much more for the education of the people, than we are. If this State has failed to take the lead in well doing, in the cause of popular education, let it be the first to follow the example of those who have excelled us.

I fear there is too much reason to regret that more zeal is not felt, and greater efforts made, to improve the condition of our primary schools throughout the State; yet there are places where their importance is duly appreciated, and vigorous exertions have been made for their advancement. Justice requires that the example of the city of New York should not be passed without notice and commendation. This city imposes annually a general tax, which now produces about ninety thousand dollars, for the support of its public free schools. They are under the management of a board instituted by the common council, called the Public School Society. This board are careful to select competent teachers, and to cause the schools under their charge to be often visited, and the course of instruction in them to be properly directed and vigilantly supervised by intelligent committees. The school established by "The General Society of Mechanics and Tradesmen," is liberally supported and wisely managed, and reflects great credit on the public spirit and intelligence of that class of citizens. A personal examination of these schools has convinced me that they

are well conducted, and induces me to commend them to other parts of the State for their imitation, so far as circumstances will permit.

The results of our system of common schools throughout the State, will be fully presented to you in the report of the Superintendent. Eight hundred and twenty towns and wards, (being the whole number in the State,) have made reports to him for the year 1832. From them it appears that there were then nine thousand one hundred and seven district schools, in which five hundred and twelve thousand four hundred and seven-five children were instructed. The whole number of children in these districts, between five and sixteen years of age, was five hundred and twenty-two thousand six hundred and eighteen.

The public moneys distributed to the districts, including one hundred thousand dollars from the common school fund, and eighteen thousand five hundred and ninety-three dollars and twenty-four cents from local funds, amounted to three hundred and seven thousand seven hundred and thirty-three dollars and eight cents; and the inhabitants of the districts raised for the same purpose, three hundred and sixty-nine thousand six hundred and ninety-six dollars and thirty-six cents. These sums, amounting to six hundred and seventy-seven thousand four hundred and twenty-nine dollars and forty-four cents, except about sixty thousand dollars expended in New York for school-houses, were paid to teachers for their services. If to this amount were added the other expenses incident to this system, the whole sum expended for the support of common schools in that year, would be about one million one hundred thousand dollars.

The Regents of the University distribute annually, from the Literature fund, ten thousand dollars to the academies subject to their visitation. The number which partook of this bounty last year, was sixty-five; and the number of students in them was four thousand eight hundred and

fifty-six, which exceeds that of the previous year by six hundred and sixty-eight. There are many other valuable institutions of the kind in the State, which do not participate in the Literature fund. We have seven colleges, two of which are devoted to medical instruction. Some of them are firmly established and highly prosperous; the others are struggling with difficulties, for the want of sufficient endowments; but all, I believe, are in an improving condition. As affecting more extensively the general welfare, common schools are justly entitled to the first consideration and the most liberal patronage; yet seminaries of a more elevated rank ought also to be sustained and cherished for many reasons, and for this particularly, that upon them we must, in a great measure, depend for competent teachers of the common schools.

The subjects connected with the business pursuits of our constituents, next claim our notice. Among these, agriculture stands first in the order of nature, as well as in the rank of importance. It contributes so essentially to wealth, that the early writers on political economy regarded it as the only source of wealth. It furnishes the means of human subsistence, and supplies most of the materials for manufactures, and the chief articles for commerce. When the labor of the farmer is bountifully rewarded, all other kinds of industry partake of its success; whatever, therefore, is done, by the government for the agricultural interest, redounds to the benefit of every other. There is no occupation which is so diversified in its objects, and requires such various knowledge to conduct it skillfully, as that of agriculture. This knowledge results from experiments in all climates, soils, and seasons, and is consequently to be derived from different countries. It receives large contributions from the mechanic arts, and from the sciences of botany, chemistry, and natural philosophy. The patronage of the government can scarcely be directed to a more useful object, than furnishing the means of collecting information

on this subject, and of spreading it among the agricultural population. A board composed of practical farmers and men of scientific acquirements, would possess great facilities for concentrating this various and scattered information; and the best means of disseminating it among the people, would be afforded by a public institution, under the direction of such a board, where agriculture should be taught as a science, and practically illustrated as an art. The general interest felt for this branch of industry, will recommend it to your favor; and its intimate connection with the permanent prosperity of the State, will make you desirous of contributing to its advancement.[9]

The citizens of this State have invested a large amount of capital in manufacturing establishments. The encouragement which this branch of industry has been most anxious to obtain, is protection against foreign rivalry; and this could be given only by the general government. The

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[9] A Senate committee considered the part of the Governor's message relating to agricultural instruction, and also several petitions on the same subject, saying among other things that

"Situated as we are, with a country which, (though but lately a wilderness,) is being improved with unparalleled rapidity, by an agricultural population more capable than that of any other nation of improving its condition, if not prevented by indiscreet legislative interference, where shall we look for instruction? It is evident that no foreign nation can impart it to us. And equally evident that scholastic establishments in our own country would only create a set of drones, who from their imperfect education, would not be capable of practically instructing others, even if they possessed sufficient industry to make the attempt. In the opinion of the committee, our farmers might, with great propriety, say to us as did the citizens of Paris to the great Colbert, when he asked them "what he could do to better their condition?" "Let us alone."

The committee are entirely satisfied that it is best to leave the manner of improving their condition, (as we have that of the other classes of our population,) to the acute sagacity and penetration of our practical farmers. Their talents and knowledge are fully adequate to the task, unless by overweening legislative tenderness, in attempting to aid them, we paralyze their genius and enterprise and thereby lead them into a speculative course of unprofitable experiments, instead of pursuing the certain and profitable modes of culture, from which experience has demonstrated that the most rapid and unexampled improvements have resulted."

The committee also thought that such an institution could not be established without direct taxation, which it was believed would not be well received even by the farmers themselves.

policy, as well as the right, of giving it, otherwise than as it incidentally results from the imposition of such duties on imports as are necessary to raise a revenue merely sufficient to support the government, has been contested. This interest has suffered by the frequency of legislation on the subject of the tariff, and by the uncertainty, as to the measure of protection it would permanently receive. Hopes are now confidently entertained, that the existing laws will remain for some years without material modification. Should such be the case, there is reason to believe that our manufactures will flourish, and soon acquire a permanency which will enable them to withstand foreign competition.

Though commerce and agriculture are the branches of industry which seem to participate most directly in the benefits of our system of internal improvement, yet they are no more favored in this respect, than many kinds of manufactures and the mechanic arts. While our public works have been attended with local advantages, they have contributed even beyond our anticipations, to the general prosperity of the State.

It was our good fortune that the most practicable route for a water communication between the Atlantic ocean and the great western lakes, lay through our territory. This advantage was early discovered by the sagacity of the people of this State, and effectually improved by their enterprise. The internal commerce carried on through the Erie canal, aided as it is by the improvements executed by the enterprise and energy of the State of Ohio, has, during the past season, increased to a magnitude which was supposed to be attainable only in its full maturity, and has extended to regions which were conceived to lie beyond its utmost limits. The country around these lakes and along the rivers emptying into them, as well as the valley of the Ohio quite down to the Mississippi, have been supplied through this channel with some portion of their merchandise. Boats are daily seen passing upon it, freighted with goods des-

tined for the territory of Michigan, the States of Ohio, Indiana, Illinois, Kentucky, Tennessee, and even for Missouri and Alabama. The delightful climate of this western region, the great fertility of its soil, and the numerous conveniences it offers for the enjoyments of human life, are daily becoming better known, and attracting towards it an increasing tide of emigration. No human efforts — no conceivable change of circumstances, can check its rapid settlement, or put far off the time when it will be the abode of a population of many millions, abounding in wealth, and seeking the comforts and luxuries to which commerce must necessarily administer. Its trade will increase with its wealth and its numbers. If our canals are to be what a wise management cannot fail to make them — the principal channels for this trade — we must calculate its extent, and make them adequate to this object. When our system of internal improvements was commenced, a great part of this fertile region was a wilderness, and scarcely a sail was spread, for the purposes of commerce, on the great western lakes. The advancing steps of settlement have but just passed the borders of what was then a wild domain, and it already abounds in products demanding a market and inviting an exchange for articles of merchandise from the Atlantic states. Lake Erie now appears like a frequented track in the highway of commercial nations. Its waters are navigated by twenty steamboats, and one hundred and twenty-eight sloops and schooners. The shipping on this lake has increased in the three last years, from six to eighteen thousand tons. The tonnage entering the port of Buffalo last year, was more than two hundred thousand; and an hundred thousand passengers are estimated to have left it for the west.

We ought not, however, to flatter ourselves that we shall enjoy what we now possess, and what lies in prospect before us, without competition. The western trade is a noble prize, for which several of the Atlantic States are con-

tending with a laudable emulation; and they are making powerful efforts to remove the barriers interposed by nature between them and their object. We look on their exertions with no unfriendly feelings; and we trust that they will view, in a like spirit, our efforts to administer to the wants and to subserve the conveniences of the western country.

It has already become quite evident that the capacity of the Erie canal will not much longer be adequate to the exigency of the business on it. The improvements which will soon be required, are double locks to facilitate the passage of boats, and an enlargement of the canal in its width and depth. These improvements must necessarily be made under great disadvantages. The public interest will not allow of an interruption to the navigation; and a considerable part of the labor must therefore be performed in the winter season. This subject will probably be presented to you in a communication from the officers having the charge of the canals, and it will undoubtedly receive from you the attention its great importance demands.[10]

The extent of business on all canals is increased by the facility of transportation, and a reduction of the expenses. By enlarging the capacity of the Erie canal, the cost of transportation will be diminished. The tolls are a considerable part of the expense. This subject has occupied the anxious attention of the Canal Board, during the present year; and some of the beneficial results to which I have alluded, particularly the wide diffusion of the trade into the western and southwestern sections of the Union, are justly ascribable to the enlightened views of this Board, and their

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[10] The Senate committee on canals conceded the importance of making improvements which would afford enlarged facilities for canal traffic, and that the canals should be deepened, either by excavation or raising the banks, but thought that adequate accommodation for the present could be accomplished by enlarging the locks between Albany and Syracuse, and recommended that double locks be constructed between these points. This recommendation was embodied in chapter 312, passed May 6. The next year, 1835, the legislature initiated the scheme of general canal enlargement.

judicious modification of the rates of toll. Previous to opening the canals last season, the tolls were reduced twenty-eight and an half per cent, on most of the products of the country, and fourteen and a quarter per cent on merchandise. Notwithstanding this reduction, the amount of tolls received on the Erie and Champlain canals during the last season, is one million four hundred and sixty-four thousand two hundred and fifty-nine dollars and ninety-eight cents, which is two hundred and thirty-four thousand seven hundred and seventy-six dollars and fifty-one cents more than the receipts of the preceding year. This Board have it in contemplation to make a further reduction on merchandise, of twenty-five per cent on the present rates of toll, before the navigation opens in the spring. This reduction will bring the tolls down nearly to the constitutional limit.[b] It is probable they might be reduced on some articles below that point, if it were practicable, without lessening the total amount of revenue.

I deem it proper to mention another subject, which has an important connection with the operations of our canal system, but which belongs essentially to the general interests of commerce. The obstructions in the Hudson river, although they affect more immediately the interest of the people of this State, operate injuriously also, upon the commercial interests of the whole country. The federal government exercises a jurisdiction over this river, so far as the regulation of commerce is concerned. It is not only the medium of internal trade among the States, but is extensively used for the purposes of foreign commerce; and the duty of regulating both, is, by the Constitution committed to Congress.[c] Though there is a great diversity of opinion as to the limits of the power possessed by the general government, to expend money on works in aid of commerce, and in some cases intrinsic

[b] Const. 1821, art. 7, § 10.
[c] U. S. Const. art. 1, § 8, clause 3.

difficulties exist in determining whether a particular object lies within or beyond its scope, yet I believe there are but very few acquainted with the subject, who would contest the right of that government to appropriate money for the purpose of removing obstructions in the Hudson River; and all who admit the right, and are apprised of the extent of the injury arising from the frequent interruption of the navigation, will at once concede that it is the duty of Congress to effect this object; but the appropriation for this purpose has heretofore been defeated, by being united in the same bill with appropriations for other objects, clearly unconstitutional, in the opinion of many members of Congress; and some who were most anxious for this improvement, were driven to the alternative of either voting against the whole bill, or of violating their obligation to support the Constitution, by giving their sanction to what they regarded as the illegal exercise of a power, which, if once established, would certainly be used to withdraw from this State, to a great extent, the advantages she has won by her unaided efforts, and by the expenditure of millions derived solely from her own resources. The passage of the bill containing these appropriations would have formed a precedent for resorting to the treasury of the United States, for funds to execute projects having no pretensions to be ranked among those of a public or national character. I venture to affirm that the people of this State, in order to procure one or two hundred thousand dollars, for what is really a national object, will never depart from a sound construction of the Constitution approved by our wisest statesmen, and consent to a dangerous enlargement of the powers of the general government, which would be used to take from them indirectly many millions. They cherish the Federal Constitution, and more highly prize the common welfare, which can only be permanently maintained by a proper exercise of the powers delegated to Congress, than any ad-

vantages they might obtain by unwarrantably extending these powers to accommodate their local interests, or by giving their sanction to an illegal application of them to favor the local interests of others.

If the appropriation for improving the Hudson River must be encumbered with others for objects not generally considered within the powers of Congress, and its success must abide the event of a struggle to establish a theory of construing the Constitution adverse to the salutary doctrines contained in the message of the present executive on the Maysville road, and since virtually sanctioned by the people of the United States, you ought, under these circumstances, to consider whether the interest of your constituents does not require that this improvement should be embraced among our public works.

Two modes of overcoming the difficulties in the navigation of this river have been suggested; the one by excavating the alluvial deposits with machines, or removing them by contracting the channel, and thus increasing the force of the current; the other by constructing a lateral ship canal, commencing below the bars, and extending to the cities above.

Apprehensions are entertained by many acquainted with this subject, that the removal of these deposits, will afford but a temporary relief, and that natural causes will soon form others. The ship canal is considered by them as the most certain, as well as the most economical mode of effecting this improvement. This work is of a different character from any that the State has yet executed. You will therefore feel the necessity of examining carefully the various plans that have been, or may be, suggested, before making any selection, should you decide in favor of the expediency of the undertaking.[11]

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11 Chapter 240, passed May 2, 1834, directed the canal commissioners to cause the Hudson River to be surveyed from Albany to New Baltimore, and also from Troy to Albany for the purpose of ascertaining the nature of the

Our first public work of internal improvement was commenced in 1817, and in the course of sixteen years we have completed six canals, the Erie, the Champlain, the Oswego, the Cayuga and Seneca, the Chemung and the Crooked Lake. By means of them water communications are opened from the Hudson river to the Susquehannah on the south, to the lakes in the interior of the State, and to the inland seas on our northern and western frontiers. The aggregate length of these canals is five hundred and thirty miles, and the amount expended in their construction, is more than eleven and a half millions of dollars. From the commencement of the system it has been steadily carried forward, without interruption, under wise councils and prudent management.

At the last session of the Legislature, another canal, of ninety-five miles in length, was ordered to be constructed, which will involve, as recent examinations seem to indicate, a further expenditure of one million five hundred thousand dollars. Though some of these works were not undertaken so early as those sections of the State most immediately interested in them desired, yet I am disposed to believe we have effected more, by a cautious policy, than would have been done by a less considerate course of proceeding. By attempting too much at once, we might not only have done less, but endangered the entire system.

The splendid success generally ascribed to the whole, is in truth, the result of only a part of our works. The Chemung and Crooked Lake canals have not been in operation a sufficient time to show the extent of their utility; but it is estimated that they will not equal in productive-

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obstructions to the ship and sloop navigation, and the practicability and cost of their permanent removal; and they were also to survey a ship canal route from Greenbush to New Baltimore on the plan suggested by Edmund C. Genet, mentioned in the Canal Commissioners report of 1820, and ascertain the probable expense of the construction of such a canal.

ness the Cayuga and Seneca, or the Oswego canal, which have not yet ceased to be a burden on the public treasury.

The Commissioners of the Canal Fund estimate the charges, above the amount of tolls, for the support of the Chemung canal, for the ensuing year, at thirty thousand, eight hundred and thirteen dollars and sixteen cents; and of the Crooked lake canal, at eight thousand five hundred dollars. These sums, if the estimate should prove correct, must be paid out of the treasury of the State.[12]

The revenue of the Oswego and of the Cayuga and Seneca canals, has considerably augmented during the past season, and if a fair allowance were made for the increase of tolls on the Erie canal in consequence of the additional business resulting from these canals, their income would probably be equal to the expense of repairs and supervision, and the interest on the debt incurred for their construction.

The amount beyond the income of these canals, paid for their support last year from the treasury, was nineteen thousand five hundred and sixty-five dollars and twenty-seven cents; and the estimate of the amount to be paid for the same purpose the ensuing year, is twenty thousand two hundred and seventeen dollars and thirty-six cents.

I do not allude to these circumstances with the view of questioning the policy of these works subordinate to the Erie canal, but to justify the considerate movements which have characterized our past legislation, and which I hope to see observed in our future measures on this important subject. I desire not to be understood by this remark as entertaining a wish to withdraw your attention from any of the applications which may be made to you for internal improvement; my wish is, to see the system not only continued, but carried forward, in the way best calculated to diffuse its blessings as widely as prac-

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12 Chapter 237, passed May 1, charged on the general fund any deficiency resulting from the maintenance of the Crooked Lake canal, and the interest on the debt created by its construction.

ticable. We are favored with a country everywhere presenting capabilities for improvement, and containing industrious and enterprising inhabitants, who are rapidly developing its resources, and anxious to have their own energies aided by the patronage of the government in removing the obstacles which intercept their easy access to our great markets.[13]

I am aware that applications will be made to you for the construction of several other works, which I deem it unnecessary to specify, because I have not sufficient information in relation to any of them to enable me to make particular suggestions which would aid your deliberations. My views relative to the character of works which it is expedient to execute at the public expense, were submitted to your immediate predecessors. Upon further consideration of the subject, I see no reasons for modifying them. The proper application of the principles then stated, will, in my judgment, carry us forward in the progress of improvement as rapidly as sound policy, dictates, and in due time will extend our system to all the objects which ought to be embraced in it.

If these views should appear to you too restrictive in their operation, and you should deem it expedient to authorize public works, which, for a series of years after they are finished, will impose an annually increasing charge on the treasury for their support, besides entailing on the State a debt for the original expenditure, you will, I presume, consider it your duty to provide the means for the ultimate payment of these burdens at the same time they are created. This provision can, in my judgment, only be made by a general tax, or by a permanent incumbrance upon the revenue of the Erie and Champlain canals. The injury that would result to the State at large, by resorting to either of these modes to raise funds for such a pur-

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[13] Several local canal acts were passed, and several surveys were ordered at this session.

pose, would, I think, much more than countervail the advantages of any public work which will not pay, after the lapse of many years, the interest on the sum expended for its construction, and the expense of repairs and superintendence.

For most, if not for all, of the proposed works, several routes are suggested; and various opinions are entertained as to the proper points for connecting them with the canals already completed, and with our rivers and the lakes. There are strong considerations to induce you, before authorizing the construction of any work, to have the routes minutely and accurately surveyed, and the proposed points of connection carefully examined by skillful and experienced persons, with a view to ascertain the amount of expenditure it will involve, and its utility when completed. The propriety of such a course is evinced by the fact that casual examinations and partial surveys have in all cases led to very erroneous estimates. All the works that have been completed, were authorized under the confident expectation that they would require a much less sum to construct them than they have actually cost. The route of the Chenango Canal was repeatedly surveyed, for the purpose of ascertaining accurately the expenditure; but after all the pains taken to arrive at a correct result, the estimates were in some instances fifty, and in others seventy-five per cent below the sum which the surveys recently made, with a view to its actual construction, indicate as its probable cost.

It would be desirable to distribute impartially to all parts of the State the benefits of internal improvements; but this cannot be done, because all parts do not offer equal facilities and equal advantages for public works. Indulging, as I trust you do, a desire to diffuse these benefits to a reasonable extent, you will consider the various plans that may be presented to you, and test them by the application of the general principles of legislation which ought to

direct your proceedings on this important subject. The disposition you may feel bound to make of them, will, I trust, be generally approved.

I have no doubt you will grant, as good policy requires you should, liberal terms and fair privileges to companies or individuals who may be willing to vest their capital in works for the improvement of the State, or for developing any of its resources.

The great design of internal improvements is to afford to the people generally the means of an easy and expeditious intercourse, and to increase facilities for the transportation of their products and articles of merchandise. While we are intent upon devising and executing magnificent works for attaining these objects, let us not lose sight of those of a humbler character, but of very general interest, essentially contributing to the same end. The heavy burdens annually imposed upon the people for common highways and bridges, are not, it is generally believed, attended with corresponding benefits. The mode of applying the labor assessed and the money raised for this purpose, is conceived to be defective. Without increasing the public expense, much better results might be obtained, by securing greater economy in the expenditures, and a more skillful application of the labor to the objects to be accomplished. The general interest of all classes of our citizens in this subject will commend it to your favorable notice.

We are apprised, through the medium of the public journals, that numerous applications will be made to you for the increase of banking institutions. Notices for one hundred and five new banks, with capitals amounting to about fifty-six million dollars, have already been published, and it is probable that additions will be made to this number. These institutions have a vital connection with the business pursuits of our constituents, by reason of their effects on the citizens in their immediate vicinity, and their influ-

ence on the currency of the country. Our business transactions have been so long conducted by means of bank credits, and by the use of a paper currency, that this course has become firmly settled, and, if it were desirable, it would be scarcely possible, to change its direction. Banks are now regarded as necessary establishments; but I cannot believe that they are required to the extent now asked for. So far as the business of the country demands an increase of them, you will feel inclined to add to their number.

Banking privileges, not only as they are granted by this State, but as they exist in almost every country, are a monopoly which ought not certainly to be increased beyond the actual exigencies of the public. Private interest in respect to these institutions, unless it accords with the public demand for them, should not, and I dare presume to say, will not, be permitted to influence your action on this subject. All legislation which turns aside from the public good, to administer favors to individuals or classes, is partial and mischievous. Every charter granted on the terms heretofore imposed, confers, in the prosperous condition of the State, a donation on the stockholders, of a sum varying from ten to fifteen per cent on the capital of the company.

Though I do not impute to the applicants, in any instance, selfishness as their leading motive, yet we should overlook a universal law of human conduct, if we did not suppose that self-interest mingles its influence in their actions, and exerts its sophistry to mislead their judgments, as to the public necessity for institutions from which they have reason to expect a considerable direct pecuniary benefit. If any means could be devised to cause the stock to go into the hands of those to whom it is distributed, worth only its par value, I think there would be much less solicitude for the increase of banks. Whatever value is given to the stock above the sum paid for it, in consequence of the franchise or peculiar privileges granted to the corpora-

tion, may, upon any principles of justice, be withheld from the subscribers, and rightfully claimed by the State; and it is a cause of regret that some provision to effect this object had not long since been adopted.

The increasing pressure upon the Legislature for the multiplication of banks, and the constantly recurring contests attending the distribution of stocks, are every day demonstrating the propriety of such a measure. I am ready to admit that there are many plausible, and some weighty objections to appropriating to the State the enhanced value of the stock of an institution chartered by the Legislature. The consideration that former applicants have received advantages which are to be denied to others of equal merit, ought not to prevail against any measure for correcting the abuses resulting from the bestowment of these advantages. If such an objection is valid now, it must be equally so at any future period; and the evils must continue, because they have once existed. One of the most effectual modes which has occurred to me, of withholding from the original owners the premium on bank stock, is by a public sale, and reserving to the State the advance above the par value. To this mode of distribution there are several objections. It would facilitate the concentration of stock in the hands of a few wealthy individuals, and thereby lead to a monied influence unfriendly to the free principles of our government. Besides, a bank, in the vicinity of its stockholders, and these not only numerous, but composed of citizens of various pursuits and different sentiments, will be more certain to fulfill the public designs of such an institution, than one owned by a few individuals, residing perhaps at a distance from it, who would feel less disposed to accommodate local customers, and be more strongly tempted to devote it to personal and private purposes.

If the premiums on the sales of stock were either paid into the treasury for general purposes, or assigned to any

of the particular funds, this disposition of them, which would be but the mere incident of a measure to correct existing abuses, might be converted into a principal motive for increasing such institutions. The desire of supplying the wants of an exhausted treasury, or of increasing a favorite fund, might possibly operate as an inducement to grant applications which would not be sustained on the ground of public utility. Combinations, by speculators, at the sale, might also prevent fair competition, and engross the stock. These objections, to some extent, at least, are admitted; but it is believed their force might be much weakened by wise provisions of law regulating the sales, yet whether sufficiently so to render the measure expedient, is a question for your determination.

The reduction of interest on bank loans has been suggested as a measure that would prevent an undue multiplication of banks, by removing private inducements for charters. Judging from the exorbitant profits of most of these institutions, it would appear that the interest on such loans might be brought down to, and even below, six per cent, and still the investment of capital in bank stock yield ordinary profits. I much fear, however, that this measure is more specious in theory, than it would be sound in practice. There are many things that laws cannot effectually control; and one of them is the interest of money. If the use of money is worth eight or ten per cent, those who have it to loan will generally contrive, in spite of legislative enactments, to obtain that rate of interest. The reduction of interest on bank loans, below the general rate, would increase, I apprehend, to an alarming extent, one of the evils to be dreaded from these monopolies. Their tendency is to degenerate into exclusively private institutions, conducted on the narrow principles of favoritism. If bank interest was one or two per cent below the common rate, their loans would generally be made to persons interested in the institutions; and, so far as the public at large was

accommodated, it would be done by a secondary operation, through the agency of those persons, at or above the common rate of interest. The large profits in which all the stockholders now participate, would be partially withdrawn from them, not however, to be more generally diffused, but to be concentrated in a narrower circle. The concentration of benefits would be speedily followed by the concentration of the stock; and the few who would by these means get the management of an institution, would be likely to use it for the purpose of private speculation, or to secure to themselves accommodations for their own business on better terms than their competitors would be able to obtain. If such should be the effect of this measure, the inducements of a private character for the multiplication of banks would be increased and the public benefits intended to be conferred by them, diminished.

The beneficial effects expected from the proposed reduction, would probably be defeated by changing the mode of doing business at the banks. Instead of loaning money on paper, payable at their own counters, they would use their funds to purchase drafts and bills made payable at other places, at such a discount as would be equal, at least, to the general rate of interest. This operation could not be restrained, nor the rate of discount regulated by law, without essentially impairing the public usefulness of these institutions.

A general reduction of interest on all loans and other contracts, would leave banks with at least the comparative advantage they now possess, and the effects of such a measure upon the general prosperity of the State, are worthy of your profoundest consideration. That the accumulation of substantial capital, as distinguished from bank loans and a surcharged circulation of bank paper, is conducive to our general prosperity, cannot be doubted. It is equally obvious that bringing down the rate of interest, would, to some extent, diminish the total amount of

our capital, or at least check its introduction into the State. Other parts of the Union, where the rate of interest is below ours, think that in this respect we have advantages over them, and they are making efforts to increase it to our percentage. In prosperous times, abundance of capital enables us to expand our business and develop our resources; and in seasons of embarrassment, it helps us to sustain the public pressure.

But if the stock of such new institutions as you may deem it discreet to grant, must be scrambled for by the subscribers, and go into the hands of the successful competitors, worth considerably more than its par value, much of the bitterness of feeling, ordinarily resulting from these contests, would be prevented, and combinations to get control of these institutions, in some measure, defeated, by appointing commissioners for the distribution of stock, in each case, who reside out of the county wherein the bank is to be located, and who shall be not only disqualified from holding any office in it, but from taking directly or indirectly, any of the stock, for a limited time after it shall go into operation.

These considerations are worthy of your serious attention; but much less so, than the great questions, how far banking capital can be safely augmented, and what further safeguards are required to secure our banking institutions from disasters, in seasons of great commercial revulsion and general embarrassment. In the course of events, such seasons will come, and the increase of banks may be one of the causes that will contribute to their recurrence; and when they do come, it will certainly be the cause of aggravating the severity of the public distress.

Almost the entire business transactions of this State, and of the whole country, are founded on a gigantic system of credit. This system expands, not only with the increase, but by the continuance of our prosperity. Success emboldens the spirit of enterprise, and men gradually forget the

lessons of caution and prudence, that adversity teaches, as they recede from the times in which they have received this useful instruction. It is your duty, when called on to extend this system by multiplying banks, to consider well what effect this measure will have upon the stability of the whole. If you enlarge the superstructure, you ought to strengthen the foundation.

It is worthy of your consideration, whether an additional safeguard would not be afforded by a general provision, restricting the circulation, not only of the new banks, but, in due time, of those already incorporated, to the amount of their capital. This restriction seems to me, to be well calculated to add to the public security, without greatly impairing the ability of these institutions to administer to the public wants. Only the specie in the vaults of the banks, remains necessarily in an unproductive state; the residue of the capital may be profitably employed; which, together with the privilege of a circulation equal to the whole, and the use of the temporary deposits, will enable them to defray their necessary expenses, and render a liberal return to the stockholders for their investments.

I should extremely regret that the considerations which I have urged for cautious action on this subject, should be construed into a warning against particular impending dangers. I am confident there is, at the present time, no existing cause for alarm. Our system of credit, compared with the immense business of the State, embracing, as it does, the transactions of the principal commercial emporium of this great nation, is not extended beyond the systems of the neighboring states, or those of other commercial countries. Besides all the safeguards provided for banks elsewhere, this State has fortified her institutions with additional securities — by creating a fund to protect bill-holders from ultimate loss — by making it the interest of all to detect the mismanagement and contribute to the safety of each — and by instituting a visitorial commission

to supervise their operations with ample powers, not merely to correct, but to prevent abuses.

The last four years have been to the people of this State a season of unwonted prosperity. Within this time there has been none of those commercial alterations which ordinarily happen every few years, except a slight pressure about two years since, occasioned mostly by an unfavorable balance against the country in its foreign trade, and one of local operation, at this time, resulting principally from the management to which the Bank of the United States has resorted with a view to obtain a renewal of its charter; but the former of these did not, and it is believed, the latter cannot, put to a severe trial the solidity of our banking institutions.

The legislature have, within these four years, added nine millions to our banking capital; and you will be urged at this session to add many millions more. It appears to me that it would be hazarding too much to augment this capital to an unprecedented extent, before we have had the experience of less prosperous times to test the effect of the increase already made. While you feel a desire to contribute, in this respect, to the wants of the various sections of the State, you will, I trust, bear in mind that you are acting on a subject of vital importance to all, in its nature both delicate and difficult — delicate, because it relates to a system sustained in a great degree by extensive and mutual confidence — and difficult, because it has numerous and complicated relations to the business pursuits of all classes of our constituents.[14]

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[14] A concurrent resolution was adopted requesting the Governor to correspond with the executives of other States, with a view to suppress in each at the same time the issue of bank bills of a denomination less than $5.

Another concurrent resolution required each incorporated bank to report to the next legislature "a statement of the amount of its bills put in circulation as money, and outstanding on the first day of December, of each of the denominations of one, two and three dollars."

The Constitution is now so amended as to allow the Legislature to reduce the duty on salt manufactured in the western part of this State, to six cents on each bushel;[d] this subject will, therefore, properly occupy your attention. The vote on the amendment of the Constitution shows clearly that a reduction is generally expected; but a question may arise as to the amount proper to be made at this time. I think there are sufficient reasons for bringing down the duty at once to the minimum rate. Salt is an article of general consumption, and a diminution of its price is a direct benefit to the consumers. The demand for that manufactured in this State, is regulated by the extent of the country to which it furnishes a supply, and this extent will be enlarged as the price is reduced. A regard to the public revenue, as well as to the interest of the manufacturers, requires that the region for consumption should be extended as widely as practicable. The material for the manufacture of this article, is so abundant, that the supply may be easily made equal to the utmost demand.

Of the salt manufactured by our citizens, large quantities are consumed in the Canadas — it supplies the country around the lakes, the western part of Pennsylvania, and a large portion of the State of Ohio, and enters into competition with the salt made at the Kenhawa Springs in Virginia, on the borders of Indiana and Illinois. A reduction of six and one half cents on the bushel will be the means of extending the sphere of consumption far beyond these limits, and the increase in the quantity manufactured for the purpose of satisfying this additional demand, will ultimately compensate the revenue for the decrease in the rate of duty. The mutual interest of the manufacturers and the consumers in this State — the advantages to the business intercourse between our citizens and the north and west, resulting directly and indirectly from our ability to supply these regions with this important and necessary

[d] Const. 1821, art. 7, § 10; Am. 1833.

article, and the ultimate effects of this increased demand upon the public revenue, considered in reference to the tolls on the canal, as well as to the direct duty on the salt, render it expedient, in my opinion, to bring the reduction to the lowest constitutional limit.[15]

The militia system was cherished by the patriots who laid the foundations of the General and State governments, as essential to the preservation of our liberties. I regret that efforts have been made to bring it into some disrepute. The unfavorable opinions which now prevail on this important subject, do not arise, I am persuaded, from a general conviction that all organization of the kind is useless; but they are to be ascribed to the defects of the present system. These defects can be effectually removed only by congress.

The joint resolutions of both houses of the last Legislature, suggesting several modifications of the present laws, have been transmitted, agreeably to a direction therein, to our senators and representatives in Congress, and also to the governors of the several states, with a request that they might be laid before the respective legislatures thereof. It is reasonable to expect that this subject will occupy the attention of Congress, and that the present organization will be so far improved, as to remedy its defects without impairing its efficiency.

By the report of the Adjutant-General for the present year, the numerical force of the militia of this State appears to be one hundred and eighty-eight thousand, four hundred and forty-seven men.

The particular funds of the State continue in a prosperous condition. The Canal fund, notwithstanding the reduction of the tolls, has increased in productiveness. The total amount of receipts during the fiscal year ending on the

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[15] Chapter 10, passed February 12, reduced the duty on salt to six cents a bushel of 56 pounds. Chapter 201, passed April 28, contained general provisions relating to the manufacture of salt at the Onondaga salt springs.

thirtieth of September, including the tolls on the Oswego and the Cayuga and Seneca canals, and the interest on the surplus moneys belonging to this fund, was one million nine hundred and ten thousand eight hundred and ninety-five dollars and sixty-four cents. The total amount of canal debt is six million six hundred and seventy-three thousand and six dollars and twenty-nine cents. The debt created for the construction of the Erie and Champlain canals, was, on the thirtieth of September, five million five hundred and twenty-two thousand six hundred and fifty-nine dollars and twenty-nine cents. To this debt the constitutional pledge of the tolls at a specified rate, and of the auction and salt duties attaches. During the last year, the Commissioners expended one million five hundred and sixty-six thousand three hundred and ten dollars and three cents, in purchasing the stock of this debt. In consequence of the period of redemption being in 1837 and 1845, they were obliged to make purchases at a premium. After making these purchases, they had money on loan, and invested in other stocks, amounting to two million six hundred and two thousand five hundred and ninety-four dollars and seventy-six cents, belonging to this fund. The actual amount of the debt to which the constitutional pledge is applicable, beyond the means the Commissioners possess for redeeming it, is therefore only two million nine hundred and twenty thousand and sixty-four dollars and fifty-three cents. If large expenditures are not made for enlarging and improving the Erie and Champlain canals, the Commissioners will probably have, before the end of three years, sufficient means for discharging the whole of this debt; yet the pledge must continue, unless all the stock be purchased, until July, 1845. The object of the pledge was to obtain the means of reimbursing the loans made for the construction of these works. When funds are accumulated amply sufficient for this end, there can be no good reason for retaining the pledge. Its continuance beyond that period, will be attended with

embarrassments and positive injury. It will prevent such a modification of the tolls, as would best subserve the interest of trade, or as would produce the best results as to revenue. If it is intended, as the course of your predecessors for a few years past seems to have indicated, that the canals shall return to the general treasury of the State, some part or the whole of the moneys that have been taken from it for their benefit, it would be proper to have that matter adjusted as soon as practicable. Should it be judged expedient to make the revenues of the canals subsidiary to the support, or the construction, of other public works of internal improvement — even for this purpose, it would be convenient to have them disencumbered at an early period. After considering this subject in all its bearings, you will determine whether the interest of the State requires that this pledge should be removed, when sufficient means for paying the loans secured by it, shall have been obtained. As such a measure will require an amendment of the Constitution, which cannot be effected in a shorter period than two years, you are invited to consider it at the present session.

The productive capital of the School fund is one million seven hundred and fifty-four thousand forty-six dollars and eighty-four cents, and has increased eighteen thousand eight hundred and seventy-one dollars and fifty-six cents, the last year. Its income was, during that year, one hundred and nine thousand one hundred and seventeen dollars and seventy-seven cents.

The capital of the Literature fund is two hundred fifty-seven thousand nine hundred thirteen dollars and forty-six cents, and it produced an income last year, of twenty-two thousand five hundred and seventy-seven dollars and twenty-two cents.

I presented to your immediate predecessors the condition of the General Fund, and urged on them the necessity of devising the means of replenishing it. Such a measure

seemed to me necessary to enable that fund, not only to defray the ordinary expenses of the government, which amount annually to about three hundred thousand dollars, but to pay such appropriations as it might be deemed expedient to make, for establishing or supporting institutions for objects worthy of public patronage. That duty was deferred, and it now devolves on you. I take the liberty to refer you to my annual message to the Legislature last year, for my views on this subject, and to recommend to you to devise and settle a system of finance for the support of the government.[16]

Having discharged the duty imposed on me by the Constitution, of communicating to you the condition of the State, and recommending such matters as in my judgment ought to engage your attention, permit me in conclusion to assure you that I shall most cordially co-operate with you in all measures for the common good of our constituents, or for the interest of any portion of them, so far as it is compatible with the welfare of all.

W. L. MARCY.

Albany, Jan. 7, 1834.

SPECIAL MESSAGES.

January 9. To the Assembly: Transmitting resolutions from other States as follows:

New Hampshire, proposing to exchange reports of judicial decisions of that State with other states; also recommending federal legislation for a better organization of the state militia.

Pennsylvania, recommending the abolition of lotteries in all the States. The resolutions were accompanied by parts

[16] Chapter 130, passed April 19, authorized the comptroller to borrow on the credit of the State not exceeding $6,000,000, and issue certificates of stock therefor. Four million dollars might be loaned to banks in the city of New York, and $2,000,000 to citizens of the State not residing in the first Senate District.

of an act abolishing lotteries in Pennsylvania from and after December 31, 1833.

Maryland, protesting against the action of South Carolina, in assuming to nullify the tariff acts. Governor Marcy also received 16 volumes of judicial decisions of Maryland, and three copies of its laws passed at the last session of the Legislature.

Connecticut, asserting the power of the federal government to enact tariff laws for revenue, and for the protection of American industries, and to enforce such laws.

January 9. To the Assembly: Transmitting the annual report of the Commissary General.

January 14. To the Assembly: Transmitting the annual report of the Adjutant General.

January 17. To the Assembly: Transmitting resolutions adopted by the Legislature of Georgia, disapproving the resolution adopted by the Legislature of Tennessee, December 21st, 1831, relative to the disposition of public lands. (See 1832, special message of March 1, *ante,* p. 391); also disapproving the policy of distributing federal revenues among the states so long as such revenues were derived from a protective tariff.[17]

January 17. To the Assembly: Transmitting papers received from the Governor of Massachusetts, relative to the abolition of lotteries, including an act abolishing lotteries, passed by the Legislature of that State, March 23, 1833.

January 30. To the Assembly: Transmitting resolutions adopted by the Legislature of North Carolina, recommending a more efficient organization of the militia.

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[17] The Assembly adopted the report of a committee on public domain approving the message of the President of the United States dated December 4, 1833, returning with his objections, to the Senate, the bill entitled An act to appropriate, for a limited time, the proceeds of the sales of the public lands of the United States, and to grant land to certain states. The Senate did not concur in the resolution.

March 24. To the Legislature:

"FELLOW-CITIZENS OF THE SENATE AND ASSEMBLY.—Since my communication to the Legislature at the commencement of the present session, the unusual derangement of the business operations of the community has been such, as in my judgment to render it the duty of the Executive to call your attention to the subject.

It was not then perceived that the order of the Treasury Department, directing the accruing receipts of the public moneys, to be deposited in the local banks instead of the Bank of the United States, could essentially interrupt the business transactions of the community; nor is it now supposed that any necessary connection exists between that act, and the present state of commercial embarrassment.

Although it was known that the Bank of the United States had commenced a rapid curtailment of its debt anterior to the action of the government upon the deposits, and had actually reduced it more than four millions of dollars during the sixty days previous to the first of October, when the order of the Secretary took effect; yet as the government had directed the change to be made in a manner best calculated to avoid any pressure upon the Bank or injury to the community, it was not reasonable to suppose, that the occasion would have been seized for the purpose of giving an unnecessary shock to business, much less of exciting a causeless panic. Certain it is, however, that since the change referred to, such has been the attitude assumed by that institution in regard to the local banks, that the latter are unable to afford to the community those assurances of future accommodations, which are so essentially necessary to inspire confidence among business men in entering into new engagements.

The partizans of that institution, and certain presses devoted to its recharter, by systematic and persevering efforts in disseminating distrust of the credit of our monied institutions, particularly those of this State, of the credit of in-

dividuals, of the resources of the country, and its ability to meet the crisis; and by endeavoring to fasten public opinion upon this act of the government as the cause of all the depression which has been experienced, as well as that which is daily predicted and held up to the public view in a distorted and exaggerated form; have also produced an excitement among the business community, calculated essentially to aggravate the pressure, and prolong its existence.

Looking at the immense wealth and resources of the country — presenting externally, as indicated by the course of exchange, an appearance of prosperity unknown for many years, and internally, until within a short period, the same favorable appearance, as indicated by abundant crops, fair prices, active mercantile and manufacturing operations; it appears to be impossible that the existing state of things should have sprung from a cause so inadequate as the mere substitution of one place for another as the depository of the accruing receipts by the government.

Although the removal of the deposits, effected as it was prospectively, and operating upon the funds in hand, not withdrawing the whole suddenly, but gradually, as the wants of the government required, furnished of itself no sufficient cause for the results which in point of time have followed it; yet it is said that its operation has been to derange the currency, to destroy confidence, and thus to produce the present embarrassment.

It is undoubtedly true that much of the pressure upon the money market has been occasioned by the destruction of confidence; but it is not easy to perceive how that is to be charged as the necessary consequence of the action of the government. It is the consequence of the attitude assumed by the Bank of the United States towards other banks — an attitude not necessary, although its advocates attempt to justify it, either as a measure of retaliation upon the government, or for the purpose of compelling those institutions to surrender or to refuse to accept the public deposits.

Nor is it easy to perceive how the action of government should of necessity derange the currency or the commercial operations of the country, through the medium of domestic exchanges. The ability of the bank to conduct all ordinary business, has not been essentially impaired, and its amount of discounted bills of exchange is at this moment as large or about as large as it ever has been. Whatever inconveniences may have resulted from its refusal latterly to furnish drafts at sight between its different offices at the usual rates, (and these inconveniences undoubtedly have been great,) would seem, therefore, to be of its own creation, or the result of that position in regard to the other banks which it has chosen to assume.

It is believed that the principal causes of the present embarrassment have no essential connection with the removal of the deposits.

In December, 1830, the Bank of the United States commenced a rapid increase of its loans and circulation, and continued augmenting them until May, 1832, having within that period added about twenty-eight millions of dollars to its accommodations to the public, and over four millions to its notes in circulation. The necessary consequence of such a large and sudden increase of facilities to business men, was to encourage a corresponding liberality on the part of the local banks, overaction in trade, and to stimulate to excess the industry and enterprise of the country. At all events, since that period, foreign commercial operations, domestic trade and manufactures, speculations in stocks, lands and produce, have been carried on to an extent and upon a scale before entirely unknown.

The policy of contraction on the part of the bank, which immediately followed this unexampled expansion, had scarcely been commenced when the tariff law of July, 1832, went into effect, the operation of which, with its subsequent modification, was well calculated to develop the injurious consequences of the overtrading which had preceded.

Under the former law, duties to the amount of about fifteen millions annually accrued upon imports at the port of New York, the payment of which was secured by bonds payable at different periods, some as long as eighteen months. As the merchandize was generally sold by the importer, soon after the execution of his bond for the duties, it is obvious that the credit afforded by the government, was to him equivalent to so much capital until the time of payment should arrive. Before this time, a fresh importation enabled him to create a new credit, and thus a very large amount of capital was constantly in use among those engaged in commercial pursuits.

The law of July, 1832, considerably reduced the amount of duties, while that of 1833, operated still further to diminish the capital of the importer thus derived from government credits, by admitting many new articles to the free list, by shortening the bonds in some cases, and by substituting cash payments on many articles subject to duty.

This law took effect on the fourth of March, 1833, and during the past year the bonds of the preceding year have been falling due, while the shortened bonds and cash duties have created an additional demand for money, thus casting upon the importer the burthen of repaying the capital formerly loaned to him by the government, and also of paying the cash duties required upon his recent importations. It has been estimated that the effect of this law has been equivalent to the withdrawal from commercial investments of from twelve to thirteen millions of capital.

The depressed rate of foreign exchange also, although an indication favorable to the general condition of the country, has, it is understood, prevented the drawing of considerable sums of money from Europe, the proceeds of produce as well as of stocks sold abroad.

These causes, together with the rapid curtailment of its debt by the United States bank, between the first days of August and December, amounting to nearly ten millions of

dollars, and all operating upon a state of trade unusually and extravagantly extended, are supposed to be sufficient to account for most of the distress hitherto experienced.

The severity of the pressure in New York, has undoubtedly been very much mitigated, by placing the public deposits in the local banks, which have thereby been enabled to discount, and have actually discounted upwards of four millions more than they otherwise could have done.

And as the charter was soon to expire, and the bank had actually commenced its curtailments some time previous to the action of the government, that action would seem to have been indispensably necessary for the protection of the public, so far as the funds of the government would afford the means. This measure, however, which as we have seen, involved no necessary destruction of individual confidence or credit, no necessary derangement of ordinary commercial operations, much less any necessity for the panic which has followed, has furnished to the bank the pretext for placing itself in a new and menacing attitude, and to its partizans the occasion of wantonly sporting with the fears of the timid, the standing of the weak, the stability of the currency, and the credit of our monied institutions.

This corporation, brought into existence for the purpose of subserving the general good, (if for any justifiable purpose,) seems to be bending the whole of its prodigious energies towards compelling the people by force of pecuniary suffering, to acknowledge the necessity of its recharter.

Our constituents have distinctly expressed their unbiassed judgment upon the question of recharter; and I cannot doubt that they possess sufficient patriotism to meet any crisis, which the controversy may produce, and that in the maintenance of principles of vital importance to themselves and to posterity, they will be ready to endure any pecuniary privation, rather than to submit to the dictation of a great monied power.

From recent debates in the National Legislature; from the tone of the presses which advocate the cause of the Bank; from the language of public meetings; from the organization of party; and from other indications too plain to be mistaken, the efforts on the part of the Bank seem to be directed especially against the monied institutions and the business relations of the State of New York. Under such circumstances, I deem it the imperative duty of the State to put forth its energies to aid these institutions in the struggle, and to protect its citizens from oppression. Connected as these institutions are, with the industry and prosperity of the State, all classes of our constituents, whether agricultural, mercantile or manufacturing, are equally interested in their welfare.

I am furnished by the Bank Commissioners, with a statement of the condition of the banks subject to their supervision on the fourth of March instant, by which it appears that their circulation had been diminished since the first day of January last, more than three millions of dollars; and that the country institutions, or those located out of the cities of New York and Albany, while they had reduced their loans and discounts only about $600,000, had reduced their circulation about two millions of dollars. The entire resources of the country banks on the fourth of March, excluding the bank fund, amounted to $21,984,000, and their entire liabilities to $12,462,000. Notwithstanding the redemption, between those dates, of about two millions of their paper, the reduction of their specie was less than $25,000; and their immediate means of redemption, consisting of specie at home and funds on deposit in Albany and New York, subject to be drawn at sight, amounted to more than thirty-five per cent. of their whole circulation.

So far, therefore, as the banks themselves are concerned, I entertain not the slightest doubt, either of their present or future ability to meet any crisis that can occur; but under a state of things which may be imagined, a proper

regard for their own safety, may put it out of their power to afford those accommodations to the public, which its interests may require.

The Bank of the United States has recently declared its intention to continue its curtailments, but in what ratio we know not. It probably has due to it in this State about seven millions; and what portion of this amount our citizens may be called upon to pay before the next session of the Legislature, cannot now be determined. If this amount shall be called in rapidly, our banks must necessarily strengthen themselves by calling in a portion of their debt; and thus it will be in the power of the Bank of the United States, if it should have the disposition, to occasion serious embarrassment to all classes of the community, unless the Legislature make some suitable provision to guard against such a result.

It has been suggested to me by several intelligent and practical gentlemen from the city of New York, for whom and for whose opinion I entertain the highest respect, and who, I am sure, were governed by no motives of individual interest in the matter, that the establishment of a large banking institution in that city was called for at the present time. A capital of eight or ten millions was mentioned; and it was proposed that the State should take one half, and pay for it by a State stock, bearing an interest of four or five per cent., redeemable at the expiration of the charter; the balance of stock to be distributed by commissioners to be appointed by the Governor and Senate, or in such other manner as should be thought best; the State to appoint its share of directors; the rate of discount to be fixed at six per cent., and if deemed proper, the surplus profits over six or seven per cent. per annum to be paid into the State treasury; the institution to issue no notes under twenty dollars, and in other respects to be made subject to the general laws of the State, reserving to the Legislature the usual right to modify or repeal the charter.

It was urged that the stock issued by the State might readily be disposed of in Europe for specie, and that such a charter would furnish a sufficient inducement to insure the necessary subscriptions for the residue of the capital; that such an institution would be able to take the debt now due to the United States Bank in this State, whenever it should be called in; to furnish the requisite facilities to the commercial interests of the city of New York in the discount and collection of domestic exchange; to acquire a character in Europe which would enable it to sustain mercantile credit in times of revulsion in trade; and, in short, to exercise a healthful influence over all the diversified interests of that great city, and consequently over every branch of industry throughout the State.

Although many of the advantages anticipated from an institution of such a character, might and probably would be realized, there are, nevertheless, objections to this proposition, of serious if not preponderating weight. It is deemed by many to be objectionable in principle for any government to engage in the ordinary pursuits of individual enterprise. Such an institution, possessing ample powers over the currency of the State, which, properly directed, might be productive of salutary effects, might also, by a misdirection of its efforts, be equally capable of producing serious and extensive injury. It might in its administration be subject to the fluctuations of political power, and thereby be in danger of becoming an engine wielded to subserve the interests of a party. It might, by the acquisition of political influence, paralyze the controlling power reserved to the Legislature; it might, for the purpose of acquiring this influence, openly take the field of party politics, and exhibit the disgusting spectacle, with which we are already too familiar, of a large monied corporation arrayed in political opposition to the government of the country.

Unless, therefore, such an institution, or one of a somewhat similar character, should be found indispensably necessary to enable us to counteract a greater evil, I should be unwilling to hazard so dangerous an experiment.

It has occurred to me, that a remedy, as well for the existing evil as for the inconvenience which may in any event result from the withdrawal of the capital now employed by the Bank, in this State, may be provided, by the issue of a State stock, if necessary, to the amount of four or five millions of dollars, and by increasing the ability of the banks in the city of New York with loans of this stock, in such manner as would be perfectly safe to the State, and at the same time enable them to extend their accommodations so as to supply the amount of capital to be withdrawn by the Branch in that city. It is due to the city banks to say, that this suggestion does not proceed from them; they have thus far sustained themselves with creditable ability, and feel a perfect confidence in their resources to do so under any emergency that may happen; but the suggestion is intended for the relief of the whole community, by sustaining the markets for our agricultural and manufacturing productions, and giving activity and vigor to commercial enterprise.

Should this measure be adopted, the necessity will at once be perceived of imposing upon certain persons to be designated by the Legislature, the power and responsibility of carrying it into effect. Ample provision should be made to secure the regular payment of interest, and the ultimate redemption of the stock by the banks to which the loans may be made, so that the State will neither be subject to inconvenience, nor incur any responsibility beyond the loan of its credit to stable and well conducted institutions. It may also be necessary to provide, that during the continuance of the loans to the banks, they shall possess the power of discounting upon them, as upon so much additional capital, without allowing them to extend

their circulation beyond the limits now prescribed by law. The banks in New York, from their position, must necessarily meet and sustain the first shock of any pressure upon the money market, and by strengthening them therefore, we aid every branch of industry throughout the State. A depression in the city necessarily affects prices in the country, and operates to the injury of the agricultural, as well as the manufacturing and mercantile interests of the whole State. Should it be deemed advisable, a portion of this stock might be disposed of, and the avails loaned in the different counties of the State through the agency of the county loan officers, as has heretofore been done on several occasions, to the great relief of the community.

It is not doubted that the State, by the loan of its credit in some such manner, may, without incurring any loss or inconvenience, do much to sustain the great interests of the people, if the necessity for it should arise; and I cannot entertain the slightest doubt that the measure would meet with their cordial approbation.

Being perfectly satisfied, that the energies and resources of this State, will enable it to bear up against any temporary depression of business which can be anticipated; that in this desperate struggle by a great monied power to perpetuate its own existence by the force of its pressure upon the community, the patriotism of the people will be found to rise, regardless of mere pecuniary sacrifices; and that it is the duty of the State to stand forth in its strength, and by the use of its credit and the sanction of its name, to shield its institutions and its citizens from harm; I commit the entire subject to your deliberate consideration. [See note 16.]

W. L. MARCY."

Albany, March 22, 1834.

May 6. The Legislature adjourned without day.

WILLIAM L. MARCY, Governor.

ANNUAL MESSAGE.

FELLOW-CITIZENS OF THE SENATE AND ASSEMBLY.—The people of this State having recently selected me to discharge the duties of their chief magistrate for a second term, I avail myself of the present occasion to express my grateful acknowledgments for this renewed manifestation of their confidence, and to assure them that my best efforts shall be devoted to their service.

At no former period have the United States occupied a more elevated position than at present, in relation to foreign powers. The claims for depredations formerly committed on the property of our merchants have been sustained by ably conducted negotiations, and admitted in almost all instances by solemn treaties; our commerce is extended to nearly every region of the globe; and our flag respected by all nations.

In adverting to the internal affairs of our country we find few causes for discontent and many for congratulation. The general government is administered with wisdom, and with a special regard to the principles on which it was founded; our national debt is now extinguished; our public revenues exceed our wants; the burden of taxation has been within a few years greatly diminished; considerable progress has been lately made in reconstructing the barriers which were erected to resist the encroachments of federal power, but which were partially overthrown by the errors of past legislation; and there is now good reason to hope that the general government, in relation to its practical operations, will soon become in all respects what it was designed to be by its wise and patriotic founders.

But your attention is chiefly to be directed to the internal affairs of our own State; it is to them your powers as legislators extend, and to them, in an especial manner, your duties relate.

In reviewing the events of the past year, your attention will be necessarily arrested by the extraordinary state of things which existed at its commencement, and continued some time thereafter. Shortly before this period, an unwonted prosperity prevailed throughout the State; the bounties of Providence had been showered upon us with a liberal hand; we had been favored with a fruithful season; labor in all the branches of industry found a ready employment and received a fair reward; the characteristic enterprise of the people was stimulated to great activity; our internal trade exceeded in amount and extent all former example; and our foreign commerce presented sure indications of being in a sound and healthful state. There was then nothing either in our internal condition or external relations which did not presage, to the mind of ordinary observers at least, the continuance of this high state of prosperity; but it suddenly passed away, and was succeeded by a period of great pecuniary embarrassment. It is not to the present purpose to trace minutely the operation of the causes which wrought this change; but all will concur, I think, in ascribing it mainly to the contest relative to re-chartering the Bank of the United States.

This Bank, since its first establishment, has been deprecated by many, as an institution existing without constitutional authority, and by still more, as a power capable of resisting the public will, and of spurning the control reserved by the authority which created it — not necessary to the fiscal operations of the treasury — pernicious in its general influence upon our currency — and dangerous, as a political engine, to the principles of our government. A great majority of the people, viewing it with disfavor, had, by electing a Chief Magistrate well known to be decidedly

opposed to a renewal of its charter, indicated their unwillingness to prolong its existence. It was not generally anticipated, though by many it was feared, that an attempt would be made by the infliction of public distress, to reverse this condemnatory sentence, so deliberately pronounced by the sovereign power of the country. But it did not comport with the views of the managers of the Bank, nor with the designs of those who had espoused its cause, to submit quietly to this decision. The Bank commenced a rapid curtailment of its issues, and withheld from the public its usual accommodations. Those who directed its operations, as well as those who acted in subservience to its views, loudly proclaimed its ability to inflict on the country universal distress, and announced its determination to do so, if the government did not act in conformity to its wishes. It was represented that its powers of annoyance were unexhausted, and almost inexhaustible; that the country was only in the beginning of its trouble; and that a dismal period was fast approaching when our channels of internal trade would be solitudes — the surplus productions of our soil would find no market — labor be without employment — commerce destroyed — bankruptcy become the inevitable lot of most men engaged in active business; when in short, all classes of our citizens would be involved in a common ruin. In furtherance of this design to bring the government to the feet of this great monied power, the banks of this State were made the special objects of attack. Their condition was misrepresented; their ability derided; and their solvency questioned.

By these exaggerated representations of the actual difficulties in which we were involved; by these bold and confident predictions of still greater embarrassments about to follow; and by the assaults made upon the credit and solvency of our local banks, a general panic was created; individual credit was impaired, public confidence shaken, and the resources which the country possessed, and which were sufficient, if brought into use, to relieve it, were withheld.

No relief was to be expected from a change of policy on the part of the Bank, without a submission to its requirements; a submission which would necessarily concede to it the power, not only to overrule the public will, but to impose its commands on the government by its ability and disposition to oppress and harass the people in their business pursuits.

The advocates of this institution exercised a controlling influence over one branch of the National Legislature, and it was therefore equally vain to hope for relief from Congress, without the same degrading submission. Under these circumstances, the people of this State could look to no quarter but to their State Government, for such relief as their character would permit them to accept — a relief without the surrender of their principles. Acting in obedience to a high sense of duty to its constituents, the last Legislature interposed in their behalf its protecting power, by authorizing certain commissioners to pledge the credit of the State, if the condition of the people should require it, to the amount of six millions of dollars, for the purpose of relieving the public distress. Provision was made for placing the money in case it should become necessary to raise any, where it would be most available to counteract the efforts which had already been too successful in destroying our prosperity, and from the continuance of which much future injury was apprehended. The wisdom of this measure was rendered most manifest by the good effects which speedily followed its adoption. The panic began immediately thereafter to subside; public confidence revived; the aggressive operations of the Bank of the United States and its partisans, soon became ineffectual; as the spring opened, business of all kinds resumed its wonted activity; the pecuniary embarrassment passed away; money at length became unusually abundant; the bold and confident predictions of general ruin were falsified; and the people of this State have enjoyed, during the past season,

a high degree of prosperity. It will not, I trust, be attributing too much efficacy to the Loan Law, passed by your predecessors, to ascribe to it no inconsiderable agency in producing this favorable change in our condition.[1]

It is worthy of particular remark, that these signal benefits have been obtained by the mere preparation to meet and repel the evils which the people have suffered, and those with which they were menaced. I am happy to announce to you, that the Commissioners have not been under the necessity of exercising the powers confided to them by this law. The credit of the State has not been pledged for any amount whatever, nor has any money been borrowed or loaned by them. The country has entirely recovered from pecuniary embarrassment, and no unfavorable change in this respect can be anticipated before the first day of February, when this law expires by its own limitation; I feel, therefore, authorized to give the most positive assurance that no act under it will be done by the Commissioners.

It is conceded that this measure was of an extraordinary character, and could be properly resorted to only under a strong necessity arising from an extraordinary state of things. Such was our situation when it was adopted. The well-being of the whole State was put in jeopardy by a powerful monied institution, acting apparently on the consciousness of its uncontrollable power, alien to our feelings and our interests, and intent on accomplishing its selfish objects by inflicting injury upon the public. The manner of its attack and the means used to compel submission to its demands were not to be regarded otherwise than as the aggressions of a public enemy, and as such were to be repelled by resorting, if necessary, to the resources of the State. The promptitude and energy with which the Legislature prepared to resist its hostility, arrested the progress of its measures of annoyance, and restored prosperity to the

[1] See *ante*, p. 481, note 16, for a statement of the purpose of the loan act.

State, without using the public credit, without creating any debt, or imposing any burden upon the people; and without encumbering their property or in any manner impairing their resources. When the imperious circumstances which called for this measure, and the benefits conferred upon all classes of our citizens in all parts of the State, by its mere adoption, are calmly and candidly considered, I am persuaded that it will command a still more decided and general approbation than it has yet received.

Our constituents have a common interest in the prompt and efficient administration of the laws. To secure to them the full benefit of this essential requisite of a good government, of which, to some extent, they are deprived by the great amount of business now devolved on the Court of Chancery and the Supreme Court, it appears to me that some modification of our judiciary has become necessary. My views on this subject were submitted to the last Legislature. I take the liberty to refer you to them, and to renew the recommendations then made, as well in relation to an amendment of the system, as in favor of the justice of providing an adequate compensation for the important and arduous services performed by some of our judicial officers.[2]

In the whole range of your duties, there is no subject in which the interests of the people are more deeply involved, or which calls for higher efforts of legislative wisdom, than the cause of Education. The fund already provided by the State for the support of common schools is large, but not

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2 The salaries of the chancellor and judges of the supreme court and circuit judges were increased by chapter 19, passed March 4, 1835. Chapter 77, passed April 13, authorized the Governor to appoint one additional master in chancery in each county except New York.

The Assembly adopted a resolution proposing a constitutional amendment providing for two additional justices of the Supreme court, also for a state superior court with a chief justice and four associate justices, and with jurisdiction co-ordinate with the supreme court except as to certain writs, also abolishing the office of circuit judge after May 1, 1837.

so ample as the exceedingly great importance of the object demands.[3]

The special subjects in relation to common schools, to which I am anxious your attention should be particularly directed, are: a provision for supplying competent teachers; improvements in the methods of instruction; and the faithful and economical application of the funds to such objects, and in such a manner, as will insure the best results. An incipient step has already been taken in regard to educating teachers. By an act of the last Legislature, the surplus income of the Literature fund, over twelve thousand dollars, is put at the disposal of the Regents of the University, to be by them distributed to such academies, subject to their visitation, as they may select; and to be devoted exclusively to educating common school teachers. The sum which they now have, applicable to this object, is about ten thousand dollars; and the condition of the Literature fund warrants the expectation that it will be about three thousand dollars annually hereafter. A plan will probably be adopted at the approaching session of the Board of Regents, for carrying into effect, in the most efficient manner, this wholesome measure; and I indulge the hope that it will have an auspicious influence upon our system of common school education.[4]

Eight hundred and thirty-five towns and wards (the whole number in the State) have made reports for the year 1833. There were nine thousand eight hundred and sixty-five school districts; the whole number of children between the ages of five and sixteen years in the State was five hundred and thirty-four thousand and two, and the num-

[3] School district libraries were established by chapter 80, passed April 13. By chapter 260, passed May 9, the comptroller was directed to transfer to the literature and common school funds certain bonds and mortgages belonging to the general fund, and take in exchange an equal amount of canal stock.

[4] By chapter 34, passed March 14, two copies of the report of the committee of the Regents, embodying a plan for the instruction of teachers was directed to be transmitted to each school district.

ber instructed in the common schools in 1833 was five hundred and thirty-one thousand two hundred and forty.

The public money distributed to the common schools was three hundred and sixteen thousand one hundred and fifty-three dollars and ninety-three cents. Of this sum, one hundred thousand dollars was contributed by the common school fund, and eighteen thousand five hundred and thirty-eight dollars and fifty-six cents by local funds belonging to the towns. The amount contributed by the inhabitants of the districts was three hundred and ninety-eight thousand one hundred and thirty-seven dollars and four cents. These sums, amounting to seven hundred and fourteen thousand two hundred and ninety dollars and ninety-seven cents, (excepting a few thousand dollars expended in the city of New York on school houses,) have been paid to teachers for their wages. The whole amount expended during the year 1833 on the common schools, cannot fall short of one million two hundred thousand dollars.

The number of academies subject to the visitation of the Regents of the University, which made reports last year, was sixty-seven; and the number of students in them at the time their reports were made, was five thousand five hundred and six.

In 1827, the Literature fund was greatly augmented; and the Regents were thereby enabled to increase the sum distributed annually to the academies, from six thousand dollars to ten thousand dollars. The number of academies then subject to the visitation of the Regents, which reported, was thirty-three; and the number of students in them was two thousand four hundred and forty. The number of students in the academies who had studied the classics and higher branches of English education, and with reference to whom the distribution of the Literature fund is apportioned, was last year three thousand three hundred and ninety. In 1827, the number of such students was only seven hundred and nine. Thus it appears that

since 1827, the number of academies has doubled; the number of students much more than doubled; and the number of those who have pursued the classics and the higher branches of English studies, has increased more than fourfold. This gratifying result may be ascribed, in no inconsiderable degree, to the enlarged and liberal patronage extended to them by the government.

There are seven colleges in this State, including the University in the city of New York; two of which are exclusively devoted to medical instruction. According to the returns made to the Regents of the University last year, the number of students in all of them was one thousand one hundred and thirty-five.

Upon the whole I think we have reason to be satisfied with the present condition of our higher schools and seminaries. In regard to the common schools, considering their great importance in a political and moral point of view, the efforts of the Legislature should not be intermitted until the system shall be so improved as to secure to the children of all classes and conditions of our population such an education as will qualify them to fulfil, in a proper manner, the duties appertaining to whatever may be their respective pursuits and conditions of life.

The funds dedicated to education and literature are securely invested, productive in revenue, and effective in diffusing among the people those blessings for which they were wisely provided. The capital of the Common School fund is now one million seven hundred and ninety-one thousand three hundred and twenty-one dollars and seventy-seven cents, and the revenue from it last year was one hundred and four thousand three hundred and ninety dollars and seventy-five cents, which somewhat exceeds the sum annually distributed to the common schools.

The capital of the Literature fund is two hundred and sixty-two thousand five hundred and seventy-three dollars and ten cents, and it produced last year a revenue of fifteen

thousand five hundred and ten dollars and eight cents. Of this sum twelve thousand dollars is to be distributed by the Regents of the University to the academies subject to their visitation, and appropriated exclusively to paying the salaries of tutors. The remainder is put at the disposal of the Regents, for the purpose of instructing teachers of common schools.

The income from all the canals and the Canal Fund for the last fiscal year, was one million eight hundred and thirteen thousand four hundred and eighteen dollars and seventy-three cents. The whole canal debt on the 30th of September last, was seven millions and thirty-four thousand nine hundred and ninety-nine dollars and sixty-eight cents, of which four millions nine hundred and thirty-four thousand six hundred and fifty-two dollars and sixty-eight cents is the unpaid balance of the debt created for the construction of the Erie and Champlain canals. For the payment of this balance, funds had accummulated on the 30th of September last to the amount of three millions and two thousand five hundred and seventy-six dollars and thirty cents.

The Erie and Champlain canal fund has yielded a revenue during the last fiscal year, beyond all the charges upon it, of one million and thirty-five thousand six hundred and sixty-four dollars and ninety-two cents; the tolls alone exceeded these charges five hundred and eighty-seven thousand eight hundred and fifty dollars and sixty-one cents.

The Bank fund is two hundred and eighty-nine thousand and forty-six dollars and forty-three cents. It has increased during the last year more than one hundred thousand dollars. The extent to which the banks are required to contribute to this fund is half of one per cent on their respective capitals for six years only, unless some of it should be needed for the purposes for which it was cre-

ated — an event scarcely to be apprehended considering the present stability of these institutions, and the almost certain assurance the public has for their prudent management, by reason of the wise supervision to which they are subjected.

The General Fund is now reduced to one hundred and ninety thousand five hundred and ninety-six dollars and sixty-two cents. It was not, I believe, originally intended that the capital of this fund should be used to furnish the means of supporting the government. The income from it was never adequate to that object, though it might have been so, but for the encroachments made upon it to establish useful institutions, and to promote the improvement of the State. More than seven millions of dollars of its capital, and of income from sources which belonged to it, have been taken for the Canal Fund, and the Literature and Common School Funds.

From the origin of our government down to a late period, taxes were imposed whenever the condition of the treasury required it, to raise the means of defraying our ordinary expenses. Taxation was discontinued in 1826, not because the income of the General Fund (the capital of which was then only two millions thirty-seven thousand nine hundred and thirty-six dollars and thirty-five cents) was supposed to be sufficient to meet the charges on the treasury; but with the deliberate intention of relieving the people from further burdens, until the capital of that fund should be exhausted. The policy of this course was questionable, and was decidedly opposed by the officer who then had the charge of the finances of the State. What was then foreseen by all as inevitable — the exhaustion of this fund — has happened; but not so soon as was anticipated. Without being aided by the avails of any general tax upon the property of our citizens, it has, for the last eight years, supplied the principal means not only of sup-

porting the government, but of paying the numerous and liberal appropriations made within that period for other objects. These appropriations have absorbed a large proportion of it. Since the discontinuance of the general tax, more than five hundred and eighty thousand dollars have been paid for deficiencies in the revenues of lateral canals; for Indian annuities; for draining the Cayuga marshes, and for the support of the deaf and dumb; and three hundred and twenty thousand and three dollars and seventy-four cents, for the State prisons, which have now ceased to be a charge upon the treasury. The sums for these five objects alone, together with two hundred and eighty-three thousand six hundred and sixteen dollars and sixteen cents of the capital of the General Fund, transferred to the Literature and Common School funds in 1827, amount to nearly three-fifths as much as the entire General Fund at the time the State tax was discontinued.

In this way the treasury has at length become exhausted, and the public exigencies will admit of no longer delay in providing funds to defray the ordinary expenses of the government, and to satisfy appropriations already made, and such as may be made hereafter.

I do not indulge the expectation that so unwise a course will be taken as to supply the means required for these purposes, by loans, without creating some special fund to pay the debt that will be thus contracted. Such a fund can only be raised by taxation, or by providing at this time for the restoration (when the existing pledge will permit it to be done) of the whole or some part of the moneys which have been diverted from the General Fund to constitute the Canal Fund.

These sources have contributed to the Canal Fund, five millions of dollars; and you ought now to settle the question, whether any and what part shall be returned to the treasury. If it shall be determined that none of it shall be

refunded, then, in my opinion, the levying of a general tax is inevitable, and should not be delayed.[5]

Proceedings were commenced by the last Legislature, to release the auction and salt duties from the constitutional pledge by which they are appropriated to the canal fund, and to restore them to the General Fund.[a] As this can be effected only by an amendment of the Constitution, your concurrence, as well as that of a majority of the electors, in the measure, will be necessary to carry it into effect. It if should be adopted, and the revenue from these sources be as abundant as it has been hitherto, it will be nearly or quite sufficient to defray the ordinary expenses of the government; but two years or more must elapse before it can be made available as the means of replenishing the treasury.[6]

The operations of the canals for the last year present most gratifying results. The business done on them has exceeded in amount that of any previous season. Notwithstanding the rate of tolls was reduced in January last, twenty-five per cent on merchandise; ten per cent on wheat, flour, beef, pork, butter and cheese, and considerably on many other articles, the income of the Erie and Champlain canals, from this source alone, during the last fiscal year which ended on the thirtieth of September, was one million three hundred and thirteen thousand one hundred and fifty-five dollars and eighty-four cents. The tolls of the last fiscal year are only eleven thousand two hundred and sixty-five dollars and seventy-nine cents less than

[5] The act for the support of government, chapter 52, passed April 3, authorized the comptroller to borrow on the credit of the State, such sums as might be needed from time to time, and issue certificates of stock running not more than seven years, and the revenues derived from salt duties, auction sales, canal tolls, direct taxes or otherwise were pledged for the payment of the certificates. The amount was not limited.

[a] Const. 1821, art. 7, § 10; Am. 1833, 1835.

[6] The amendment relative to the salt duties and auction sales was submitted to the people by chapter 147, passed April 23, and was approved at the general election in 1835.

those of the previous year; the business on the Erie and Champlain canals has, therefore, increased nearly in the ratio of the reduction of the tolls.

Provision was made at the last session of the Legislature for doubling the locks on the Erie canal, between Albany and Syracuse. I regret that this measure was not accompanied with another, almost equally necessary, providing for the enlargement of the capacity of the canal; for I deem it important that the new locks should be made with reference to this latter improvement. As the Commissioners have not yet begun to construct them, it is worthy of your consideration whether you should not now authorize this enlargement, and direct the new locks to be made in conformity thereto.[7]

On each of the other canals, the tolls of the last year, although the rates were reduced as above stated, have exceeded those of the preceding year; and the business on them has therefore considerably increased. Although the tolls collected on these minor canals have increased, they have been insufficient to pay the interest on the debt created for their construction, and to defray the expenses for repairs. An advance from the treasury, for the year ending thirtieth September, has been required, of twelve thousand six hundred and forty-nine dollars and eighty-three cents, for the Oswego canal; three thousand seven hundred and sixty-one dollars and seventy-six cents, for the Cayuga and Seneca canal; forty thousand seven hundred and twenty-three dollars and fifty-five cents, for the Chemung canal; and twelve thousand eight hundred and twenty-nine dollars and eighty-two cents, for the Crooked Lake canal. It is proper to observe that these canals receive no credit on account of the increase of business on the Erie canal, to which they in some measure contribute.

The whole of the Chenango canal, together with all the works connected with it, except two reservoirs, (which may

[7] The enlargement of the Erie canal was authorized by chapter 274, passed May 11.

not be necessary,) is under contract, and is to be completed before the first of November, 1836. The circumstances of the times have been very favorable in regard to the expense of this work, and it is believed it will be completed for a sum not much exceeding one million seven hundred thousand dollars.[8]

Your deliberations on the subject of internal improvements will be regarded by the whole State with interest, and by many sections of it with intense anxiety. It is important to the general welfare, that our system should be carried on progressively in the manner best calculated to diffuse its benefits as generally and equally as practicable. With a view to obtain the best results in this respect, your particular attention should be turned towards settling a system of finance in relation to this branch of public expenditure. Our own experience on the subject of internal improvements, as well as that of other States, forbids the hope that any public works hereafter to be constructed by the State, will yield an income, for a considerable time after they are completed, sufficient to keep them in repair and pay the interest on the debt created for their construction. The suggestion now made in relation to a system of finance is not new. Every State which has embarked in undertakings involving large expenditures has, at the same time it authorized them, provided the means for paying the interest on the public debt to be thereby created. Our treasury was deprived of the revenue from some of its most prolific sources, for the purpose of constituting the Canal Fund, by the very act which provided for the construction of our first public works. The States of Pennsylvania and Ohio laid a general tax on the people for the same purpose, when they commenced their system of internal improvements. Such a measure was considered necessary, by us and by them, to sustain the public credit; and public credit was

[8] Chapter 182, passed April 30, authorized a loan of $860,000 for use in constructing the Chenango canal.

rightfully regarded as necessary to insure success to these undertakings. We have omitted this important part of the system in regard to our lateral canals, and the consequence has been, that the fund for the general support of the government, has had to sustain them for the last five years, and has advanced for that purpose, two hundred and forty-nine thousand, six hundred and forty-six dollars and twenty-nine cents; of which the sum of ninety-three thousand, eight hundred and eighty-one dollars and sixteen cents was paid during the last year.

The burden of supplying the deficiency in the revenues of these canals, which is estimated by the Commissioners of the Canal Fund at sixty thousand two hundred and thirty dollars and fifty-three cents for this year, (and it will not probably be much less for several years to come,) still rests upon the treasury; and the treasury will not have the means, unless you provide them, to discharge it, or even to pay the ordinary expenses of the government without resorting to loans. The effect of a departure, in this particular, from our original system in regard to internal improvements, shows the wisdom of that system, and admonishes us of the necessity of returning to it. No government that had a proper regard for its public credit or its permanent prosperity, ever contracted a public debt without providing a revenue for the payment of the interest at least, if not for its final extinguishment; and none that neglects to make such a provision, but supplies its necessities, whether ordinary or extraordinary, by loans, and provides for the interest on them by new loans, can long prosecute successfully public enterprises requiring large expenditures. I therefore deem it essential to the success of the system of internal improvements, that you should in some way provide adequate means for paying the interest on the public debt that must be incurred by its further prosecution.

Before you authorize the construction of any public work, it will be proper for you to compare the expenditure it will

require with the benefits it will confer. In relation to the former it should be borne in mind that every public work which we have executed has cost nearly double, and in some instances more than double, the estimate at the time it was authorized. In relation to the benefits, your views should be liberal and extended. They should not be confined to the state of things that will exist immediately on the completion of the work, but should have regard to the progressive advancement of the region of the State to be laid open by it; to the probable development of new resources; to the extension and increase of internal trade; and even to the local advantages it will confer. Having in my first message stated my views of what should be the character, productiveness and other attendant advantages of any proposed work which it would be proper, in my opinion, for the State to execute, I take the liberty of referring you to them, as substantially those I now entertain on the same subject.

The projects for improvements of considerable magnitude, which will probably be presented to your consideration at the present session, are, a railroad from the city of New York to Lake Erie, through the southern tier of counties; the Black River canal; the Rochester and Olean canal; a ship canal from the Hudson River to Lake Ontario; and another around the Niagara Falls. The line of the proposed railroad passes through an interesting and rapidly improving section of the State, and in addition to the common advantages of such a work, one of a more general character and affecting more immediately the commercial interests of the State, is urged in its favor. It is anticipated that by this improvement an intercourse, for commercial purposes, with the extensive and flourishing regions of the West, would be opened earlier in the spring, and continued later in the autumn, than it now is or can be by the Erie Canal.

A law passed at the last session of the Legislature, directed the Executive to appoint a competent and experienced engineer to survey a route for this railroad. Such an appointment was made, and the survey has been executed. I am informed by Mr. Benjamin Wright, the engineer selected for this purpose, that the map and profile required to be filed in the office of the Secretary of State, will be completed about the fifteenth instant. These, when executed in the manner required by law, will assist you in coming to a correct conclusion on the subject of this improvement.[9]

In relation to two of the projects I have mentioned — the Black River Canal and the Rochester and Olean Canal — I will only observe, that they are improvements in which a large and enterprising portion of our constituents feel a deep interest, and which they believe to be of great public importance. The Legislature at the last session directed surveys of the routes for them to be made, and reports to be laid before you. When they are received, you will possess authentic information to guide your action in relation to these improvements.[10]

The government of the Canadas is making vigorous efforts to render safe and easy the navigation of the St. Lawrence, with a view to direct the business on Lake Ontario and the region above and around it, to Montreal and Quebec. One of the principal objects of the proposed ship canal, is to countervail these efforts, and draw this business to the city of New York. The enlargement of the Erie Canal, will, to some extent, contribute to this object. It will be for you to determine, whether the additional advantages of a ship navigation are of sufficient importance to call for the construction of such a work.

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[9] Chapter 247, passed May 8, amended the act of 1832, incorporating the New York and Erie railroad company.

[10] The construction of the Genesee Valley and Black River canals was authorized in 1836.

The attention of the last Legislature was directed to the importance of removing the obstructions to the navigation of the Hudson River; but as this work has been since undertaken by the General government, it will not be necessary for you to act on this subject.[11]

Other projects of internal improvement than those I have mentioned, have occupied the attention of the people in different sections of the State. Should any of them be presented to the legislature, I trust they will receive the consideration which they merit.

As contributing in some measure to the same ends for which works of public improvement are undertaken, I would bring to your notice the subject of common highways; I refer you to the suggestions in my message of last year on this subject, and desire that it may receive your favorable consideration.[12]

Our penitentiaries have been properly regarded as objects of great public concern, and have occupied for several years the anxious attention of the Legislature. Its views have been directed to them as the means of diminishing crimes, reforming offenders, and relieving the State from the burden of supporting convicts. Our first efforts on this subject were experiments, made without the light of much experience; and the results were quite as favorable as could have been reasonably anticipated. Though our system has been progressively improved, it has not yet been brought to that degree of perfection of which it is susceptible. The facts disclosed by the officers who have had the immediate

11 Chapter 229, passed May 6, authorized the government of the United States to "enter upon, take and occupy such real estate in the vicinity of the improvement of the navigation of the Hudson River authorized to be done by a law of the United States, as may be necessary to effect such improvement," and acquire private property for this purpose either by agreement or condemnation.

12 Several public roads were authorized at this session by special law, and the revised statutes were amended as to details of highway administration. Chapter 300, passed May 11, contained provisions relative to carrying railroads across highways.

supervision of our prisons, and by the reports of the several committees appointed by the Legislature to examine them, will direct your attention to existing defects, and aid you in applying proper remedies, and adopting such further improvements as have been suggested by our own experience or by that of other states.

One of the desirable objects, which we have aimed at, has been to make the avails of the labor of convicts defray all the expenses of these establishments. In order to produce such a result, various kinds of mechanical business have been introduced into them. The earnings of the convicts during the two last years have been more than sufficient to pay the ordinary expenses of the prisons, and to furnish the means of enlarging them and adding to their accommodations; and if a regard to the interests of a numerous portion of our fellow citizens should not require a different direction to be given to this labor, the prisons would cease to be a charge upon the treasury, and probably become a source of revenue to the State; but it never can comport with just and fair legislation to produce such a result by directing this labor in such a manner as to cause it to operate oppressively upon any particular branches of industry. It is an essential principle of our government, that burdens and benefits are to be shared equally by all; and I do not doubt that you will consider it your solemn duty as legislators, to give practical effect to this principle. The mechanics in almost every section of the State have considered their interests injuriously affected by the manner in which the labor performed in the prisons is brought into competition with theirs, and they appealed to the last legislature for relief. The complaint of so large and respectable a portion of our citizens commanded its prompt attention, and it directed commissioners to be appointed to examine into the government, economy and discipline of the prisons, and particularly into all the matters which constituted the grounds of this complaint. The report of these commis-

sioners, which, I presume, will be made at an early day in this session, will bring the whole subject in all its relations and bearings before you, accompanied with such suggestions and authentic information as will enable you to appreciate the extent of the evils complained of, and to apply to them an effectual remedy. Our fellow citizens engaged in mechanical pursuits confidently rely upon the Legislature to remove any partial burden resulting incidentally from the present mode of employing convicts, and I trust you will readily grant them such protection in this respect as they may properly claim from a government founded on the principle of equal rights and common privileges. No considerations connected merely with the income of the prisons should be permitted to interpose any obstacle to removing all just grounds of complaint. This object, I am persuaded, may be attained, without abandoning the present system of discipline, or defeating the main ends for which our penitentiaries were established.

Another effect resulting from the introduction of numerous mechanical branches of business into our State prisons is also a subject of grievance to the mechanics, and is worthy of your considerate attention. The necessary consequence of instructing convicts in mechanical trades is to bring them, when discharged, into more frequent association with mechanics than with any other class of citizens. Those employed in such pursuits are, in this manner, more exposed than others to the demoralizing effects of this vicious companionship. While those who have been subjected to the discipline of our penitentiaries should be strengthened in their resolutions to reform their conduct, and all the avenues should be opened to facilitate their return to a correct course of life, and to encourage them to become useful members of society, great care should be taken to do this in such a manner as not to impair the moral condition of any description of citizens, or even to

expose them, either in their own or the public estimation, to any diminution of the respect and consideration due alike to all.[13]

The number of prisoners in the Auburn prison on the twenty-fourth day of December was six hundred and fifty, and in the Mount Pleasant prison, on the first day of that month, eight hundred and twenty-eight.

The number received into the two prisons during the last year, is about the same as that of the preceding year; being in the Auburn prison five less, and in that at Mount Pleasant, nine more. The number remaining in the Mount Pleasant prison on the first of December last was one less than it was at that time in the year 1833, and in the Auburn prison thirty-seven less than in 1833.

The earnings and profits of the Auburn prison from all sources during the year ending thirtieth of September last were forty-seven thousand seven hundred and twenty-three dollars and twenty-seven cents; and the expenses for general support and ordinary repairs were forty-two thousand two hundred and twenty-eight dollars and ninety-four

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13 The commission appointed under the act of 1834 to investigate prison administration, and especially to inquire and report concerning the possible competition between convict labor and free labor presented its report to the Legislature of 1835. The commission considered the subject of convict labor from various points of view, noting among other things, that a large number of articles could not be conveniently made in this country, and that therefore, the manufacture of them in the prisons would not create any competition with domestic free labor. The result of the discussion by the commission, and of further consideration of the subject in the Legislature, was the enactment of chapter 302, (May 11) concerning prison administration, which contained the following provision:

"No mechanical trade shall hereafter be taught to convicts in the State prisons of this state, except the making of those articles of which the chief supply for the consumption of the country is imported from foreign countries."

Foreign artizans might be employed as instructors in the manufacture of the permitted articles. The act imposed a time limit on contracts for the employment of prisoners. Provision was made for the introduction of silk manufacture in the prisons, and mulberry trees were to be planted on available prison lands, and also on county poor farms.

cents. The income of the Mount Pleasant prison for the same period was seventy-six thousand nine hundred and ninety dollars and eighty-four cents. The expenditure for the general support during that time was fifty-five thousand five hundred and ninety-three dollars and eighty-five cents; nine thousand three hundred and ninety dollars and four cents of the balance was paid to the corporation of the city of New York, to satisfy a demand due to it for supporting the female convicts. There has been expended at the Auburn prison eight thousand three hundred and eighteen dollars and seventy-two cents, for additions and improvements, and at the Mount Pleasant prison for improvements, two thousand four hundred and sixty-six dollars and thirty-four cents.

The income of the two prisons over their ordinary expenses, exclusive of the support of the female convicts, was twenty-six thousand eight hundred and ninety-one dollars and fifty-two cents, for the last fiscal year; and over all expenses, ordinary and extraordinary, six thousand seven hundred and sixteen dollars and forty-one cents.

In my annual message of last year several subjects, in my judgment, worthy of the attention of the Legislature were then presented for consideration, accompanied with such remarks as were deemed appropriate. I shall merely allude to them again, without however, detaining you by repeating what was then said, or enlarging upon the reasons which induced me to commend them to the favor of the Legislature. These subjects were:

The erection of a separate prison for female convicts;[14]

The exceptionable condition of most of the county jails, as places of punishment for persons convicted of minor offences;[15]

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14 By chapter 104, passed April 20, a woman's prison was to be erected at each of the general State prisons.

15 The Assembly committee which had under consideration the part of the Governor's message relative to the condition of county jails, reported that it was inexpedient at that time to recommend any alteration in the law in relation to county jails.

The improvements required in the police of most of the county poor houses;[16]

The claims of the blind for assistance in obtaining the means of instruction;[17] and,

The establishment of an asylum for the insane poor. The founding of such an asylum was then, and still is regarded by me as an object deeply interesting to humanity; and it was urged upon the last Legislature, not merely for the purpose of furnishing this class of forlorn fellow-beings with a comfortable subsistence, (for this is now done in an imperfect manner by the general provision for the support of paupers,) but as the necessary, and to many of them, the only means of restoring them to mental soundness. Their claim to legislative aid is certainly not impaired by delay; and I sincerely hope it will receive your favorable consideration.[18]

Recent events, and particularly the discussions relative to the renewal of the charter of the Bank of the United States, have turned the thoughts of the people towards the character of our circulating medium, and the tendency of banking institutions and other corporations. Public opinion has every where accorded a full measure of approbation to the general views of the national executive on the subject of a metallic currency; and the people of this State now call in no equivocal voice upon their Legislature to aid

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16 The sale of intoxicating liquors to paupers was prohibited by chapter 272, passed May 11. By chapter 299, passed May 11, the first judge of the county was authorized to fill a vacancy in the office of superintendent of the poor.

17 An Assembly committee considered the subject of providing instruction for the blind, and reported that it was inexpedient to attempt to frame general legislation without more accurate knowledge as to the number of blind persons in the state, and that inasmuch as a census about to be taken would show the number of blind persons, the subject should be postponed until the next session of the Legislature.

18 An Assembly committee recommended a state asylum for insane poor, and introduced a bill accordingly. In 1836, an act, chapter 82, was passed, providing for a state asylum, which was located at Utica.

in accomplishing this object, by withdrawing from circulation a portion of the notes of our banks, with a view to facilitate the introduction and circulation of gold and silver coin. For this purpose it is recommended that provision should be made for prohibiting the issue and circulation of all bank notes under the denomination of five dollars. The benefits of such a measure would be manifold; it would give the public a better currency, composed in part of the precious metals; it would relieve, partially at least, the laboring classes from the losses and inconvenience to which they are exposed from uncurrent and spurious bills; it would, in some measure, prevent the ruinous consequences not only to individuals, but to the public, resulting from the sudden expansions and contractions to which a paper currency is constantly liable; and it would give greater stability to the business transactions of the country. Attempts have heretofore been made to adopt this measure, but were probably defeated by the apprehension that the small bills issued by the banks of adjoining States, although their circulation in this State was prohibited by law, would be substituted for those of our own institutions, and that the evil would be thereby continued, while the advantage of the circulation would be transferred from our own banks to those of other States. To remove this objection, and to render the measure effective, the Executive was directed by a resolution of the last Legislature, to open a correspondence with the Governors of the adjoining States, with a view of obtaining the adoption of a similar measure in each of them. This duty has been performed, and there is reason to believe that the subject is viewed by the people of those States, as it is here, in a favorable light, and that they will co-operate with us in this movement for remedying the evils of a paper circulating medium, and procuring a sound currency.

Though I do not anticipate any serious objection to the measure of suppressing the circulation of small bills, there

may be some diversity of opinion as to the time and manner of effecting it. In determining upon these, particular regard should be paid to the state of things as it now is, and is likely to be for some time to come. Within a short period, the concerns of an enormous monied institution, to which the people of this State owe several millions of dollars, will probably be closed, and it would not be prudent to assume that this will be done with any special regard to public convenience. A considerable portion of this debt, and of the business which has been done by this institution, will be necessarily and gradually transferred to the local banks. Such a transfer, under the most favorable circumstances, would cause some inconvenience, and it might become very serious, if the ability of these banks should be greatly impaired, or our present extended system of credit rudely shaken by any ill-timed measures in regard to them.

By a resolution passed at the last session of the Legislature, each bank in this State is required to report to you this day, the amount of the several denominations of bills under that of five dollars, which it had put in circulation, as money, and which were outstanding on the first day of December last. These are the bills which are proposed to be withdrawn; and the amount of them now in circulation is estimated at about four millions of dollars. The object in withdrawing them, is not to diminish the amount of the circulating medium, for that would operate injuriously, by reducing the wages of labor and the price of property, but to introduce instead of this paper money, a like amount of gold and silver coin. There should be no hesitation in providing at the present session of the Legislature, not only against the further issues of each denomination of these small bills, but also for the withdrawal of those now in circulation, at a proper time. The withdrawal should be made at a successive period for each denomination, with the view to secure an effectual substitution of the coins for the paper money withdrawn, and to prevent a sudden and injurious contraction of the circulating medium.

In relation to fixing these periods, it should be borne in mind that we have now an unusual quantity of the precious metals. This circumstance will facilitate the operation of substituting coin for the paper to be called in, and allow it to be conveniently done at an earlier period than that which could be prudently selected for executing this measure if there was a scarcity, or no more than the ordinary quantity of specie in the country. It is also proper that you should consider the inconvenience which might result from a too sudden withdrawal of the small bills from circulation, in connection with the unfavorable effects which the continuance of their circulation has upon our currency and business, and the advantages which their withdrawal will secure to the public at large. To ensure success to the measure proposed, it will be indispensably necessary to make effectual provision for preventing the circulation, in this State, of the small bills issued by the banks of other States.[19]

I conceive it to be my duty to repeat the recommendation which was made to your predecessors in relation to reducing the amount of circulation now allowed to the banks. It should not, in my judgment, be permitted, in any case, to exceed the amount of their respective capitals, nor should their credits be allowed to exceed twice that amount.

Charters of banks are applied for, and granted upon the alleged ground that they are required for the public good; but it is the nature of such institutions to be less regardful of this consideration than of their own pecuniary interests; their conduct is therefore very properly an object of constant scrutiny. Any contrivances which they may resort to, with a design to enhance their profits, should be

[19] The circulation of bills under the denomination of $5 was prohibited by chapter 46, passed March 31, 1835.

A concurrent resolution was adopted requiring each bank to report to the next Legislature the total amount of each denomination of its bills in circulation.

promptly suppressed. I have reason to believe that in this respect, the public have had just grounds of complaint against some of our banks.

Instead of discounting notes according to the usual course of business, they have required drafts of their customers payable at some distant place, knowing that the drawers had not and did not expect to have funds at such place to pay them. When these drafts arrived at maturity, others were offered to the same banks, and taken in payment of the former. A discount of one per cent beyond the legal rate of interest has been exacted on these successive drafts; and by this mode of doing business, those who have been under the necessity of applying for accommodations to the banks which have resorted to this practice, have been subjected to pay an exorbitant sum for the use of the money thus obtained. Such a mode of oppressive extortion did not long escape the vigilance of the Bank Commissioners, and I have reason to believe they exerted, to good effect, all the authority they possessed to cause it to be discontinued; but I doubt whether their powers are sufficient to enable them to check this practice, and prevent a recurrence to it. You have the power to correct not only this but all other practices inconsistent with fair dealings on the part of these institutions towards the public, and I presume you will consider it your duty to exercise it promptly, by applying it directly yourselves, or through the agency of the Bank Commissioners. The practice to which I have alluded is distinct from the fair business of discounting drafts, and the remedy to be applied to it should leave the right to discount them, in the regular course of business, unimpaired. To give to the ordinary business of loaning money the form of buying or selling drafts, for the purpose of taking usury with impunity, or as a pretext for extortion, is the practice reprehended. I have no reason to believe it has prevailed in many institutions, and it should not be tolerated in any.

While on the one hand you should act with promptness and vigor in keeping all banks within the sphere of action allowed to them, and in guarding the public against the mischievous perversion or misapplication of their powers and privileges, by restraints, and, if necessary, by annulling their charters; good faith requires, on the other, that such as use their powers and privileges in strict subservience to the purposes for which they were bestowed, should be protected in the enjoyment of them, without any diminution other than may be necessary to give effect to measures of general policy for the public good.[20]

I ought not to pass from this subject without alluding to the conduct of the State banks during the late period of panic and distress. That they, in most instances, exerted their best abilities to administer to the necessities of a suffering community will not, I presume, be questioned; and as little can it be questioned that they would have done this effectually in spite of the assaults made upon them and upon public credit, with a view to subserve the interests of a great monied monopoly, and to effectuate the purposes of a political party, had not a large portion of that class of our citizens, most interested in sustaining public confidence in our currency, and most exposed to losses by its derangement, been led, by a strange infatuation, to concur in these mischievous designs, and to lend their active efforts to increase the panic, and spread far and wide its ruinous effects.

It is exceedingly difficult to confer particular privileges on a few without derogating from the equal rights of all others. Public opinion requires of you more caution in relation to granting corporate privileges than has been heretofore observed. The right of the Legislature to create corporations is recognized by the constitution,[b] and

[20] Discounts were regulated and restricted by chapter 307, passed May 11, which prohibited a bank from receiving a premium on a draft issued in payment of a draft due to or discounted by it.

[b] Const. 1821, art. 7, § 9.

it may be exercised in many instances harmlessly and even beneficially in regard to the people at large; but in no inconsiderable number of cases, corporate powers and privileges are sought for as furnishing means not allowed to all for acquiring property, or for managing it in a profitable manner without the hazards to which it is exposed in individual hands.

Among the various applications usually presented to the Legislature for acts of incorporation, those for banks have been urged with the greatest earnestness, and it is highly probable several of this kind will be made to you at the present session. One of the strongest arguments that will be offered to you in behalf of them, will be, that banks are attended with many local advantages; that the sections of the State which have none, or not so many as there are in others, and which present better considerations in favor of their particular applications than those that have been successfully urged in other cases, are entitled on the principle of equality of rights, to a participation in these advantages; and that a departure from the course heretofore pursued on this subject, will be an act of partial legislation and unjust towards them. This argument, which is alike opposed to any temporary suspension and to a permanent change of the course heretofore pursued on this subject, will not be less cogent at any time hereafter than it is now, and, if it is permitted to prevail, the Legislature will still go on as heretofore, multiplying banking institutions, whatever may be the effects upon our present system, or upon our currency. It must be conceded, I think, that banks have been heretofore too freely granted, and that we have enough of them for all the legitimate uses for which they are now wanted; you will, therefore, in my opinion, best promote the public good by refusing to add to their number.

Recent occurrences have tended to restore the militia system to the public estimation which it justly deserves

in our government. It has been necessary to resort, more than once within the last year, to the military force to aid the civil magistrates in the city of New York, in protecting the persons and property of our citizens, and in preserving the public peace. The alacrity with which the several corps performed the duty required of them on these occasions, and the efficient support they afforded the civil authority, in arresting the progress of lawless violence, and maintaining the supremacy of the laws, reflects credit on them, and vindicates the wisdom which regarded and provided for a well-organized militia as an essential part of our political system.

I have heretofore adverted to some changes in the organization of the militia, which, in our present condition, might be made without diminishing its practical benefits, and by which the burdens consequent upon the performance of militia service might be greatly alleviated. These changes can be made only by the general government; and whatever the Legislature could do to impress on Congress the importance of acting on this subject, has, I believe, been done already by your predecessors. There are, however, some evils resulting from the present system, which it is believed the Legislature is fully competent to remedy. The present mode of punishing delinquents operates oppressively and unjustly in many cases. The number of regimental and battalion courts martial annually organized in the State, is nearly four hundred; and they have cognizance of all delinquencies for the non-performance of duty, and for deficiencies in equipments. From the sentence of any such court, an appeal, if made within twenty days, is allowed to the officer organizing the court; but no other or further means of redress are prescribed or allowed, however great may be the injustice or error of the decision. Notices to delinquents to appear before these tribunals, may, in case of absence, be served by leaving copies thereof at their usual place of abode; and it

often happens, that those who have good excuses for not performing military duty, are sentenced to pay fines and penalties without any actual knowledge of the proceedings against them. Before the parties aggrieved are apprised of the decisions of the courts, the right of appeal is frequently lost by the lapse of time. There are also some obvious objections to confining the appeal exclusively to the officers appointing the courts. Relief in cases of manifest hardship, has been formerly sought by applications to the commander-in-chief; but I have denied them, from a conviction that the law does not confer upon him the power to reverse or modify the judgment of these courts. I recommend that the time allowed for an appeal should be extended to twenty days after actual notice that a fine or penalty has been imposed, in every case where the summons to attend the court had not been personally served on the delinquent; and that a further appeal in all cases should be allowed from the decision of the officer ordering the court, to the brigadier-general. To authorize an appeal in such cases to be carried to an officer higher in rank than a commandant of a brigade, might not be necessary for the purposes of justice, and would be attended with much inconvenience.[21]

During the last charter election in the city of New York, the State arsenal was broken open, and forcible possession taken of the public arms by a mob. An act so flagitious in its character, and tending so directly to bloodshed, called public attention to the exposed situation and insecure condition of this establishment. The Executive was directed, by a resolution of the last Legislature, to enter into a correspondence or negotiation with the com-

[21] The Governor's suggestion relative to appeals in court martial cases was embodied in chapter 304, passed May 11, which contained a provision authorizing an appeal within 10 days after personal notice of the sentence imposed by a court martial in case the delinquent was not personally summoned to appear before such court, and did not appear, and a further appeal was allowed to the officer commanding the brigade.

mon council of that city for an exchange of the present site of the arsenal, together with the buildings thereon, for a more eligible one in the upper part of the city. Such a correspondence has been opened; and it is ascertained that the corporation have several pieces of land eligibly situated for the proposed object, any of which they would very willingly exchange, on terms advantageous to the State, for the site of the present arsenal. With reference to some measures regarding the police of the city, they desire that the exchange should be made as soon as practicable; I therefore recommend that you should consider this subject at an early period in the session.

I conceive it to be of the utmost importance that you should provide effectual means for executing with rigor the act passed in 1829 "to preserve the purity of our elections." The expenditure of money allowed by this act is confined to a few objects, and under no conceivable circumstances could it amount to but a small part of the sums which there is reason to believe have been expended in the recent elections.

The elective franchise is the source of all power in our political system; and next in importance to its enjoyment is the preservation of its purity. Power corrupted in its source disorders the whole government. The moral and political condition of the electors has hitherto been sufficiently healthful to counteract the corrupting influence of money, and I hope it may long continue so; but they ought to be shielded, as far as legislation can do it, from all assaults upon their purity. I am disposed to ascribe the increased efforts that appear of late to have been made to influence the elections, by the lavish use of money, to the nature of some of the questions involved in our political contests, rather than to any encouragements such a practice has derived from a supposed decrease of virtue in the electors; but from whatever cause it has arisen, it is dangerous to civil liberty, and ought to be repressed by the Legislature.

The constitution imposes on the Legislature the duty of preventing the sale of lottery tickets within this State.[c] In defiance of the existing law on this subject, the buying and selling of these tickets is extensively carried on in various places. Not only the obligation created by the constitution, but the duty you owe to your constituents, to suppress public evils, requires you to provide more effectually for putting an end to this traffic.

An enumeration of the inhabitants of this State is to be taken this year, and if it should be deemed expedient to procure statistical information in relation to other matters than such as are now required by law, it will be necessary to provide therefor immediately, in order to enable the Secretary of State to prepare and distribute proper blanks within the period allowed for that purpose.[22]

The recent and lamented death of our distinguished fellow citizen, Simeon De Witt, will devolve upon you the duty of electing a successor in the office of Surveyor General, which he filled with great credit to himself and eminent usefulness to the State, for the long and uninterrupted period of fifty years. I deem it not inappropriate to avail myself of this occasion to pay a tribute of respect to the memory of a most faithful public servant, who devoted almost the whole of a long and active life to the service of this state. In the dawn of manhood he espoused the cause of liberty, and became eminent among our revolutionary patriots. He entered into the service of this State in the infancy of its government, and regarded its advancement with parental solicitude. He aided in founding and in building up most of our public institutions, and has left more, if not more enduring, memorials of his useful services, than any other of our numerous public bene-

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[c] Const. 1821, art. 7, § 11.

[22] By chapters 40 and 42, passed March 16 and March 23 respectively, the census provisions of the Revised Statutes were amended by requiring statistics on additional subjects, including the number of blind persons, and also information as to various classes of manufactures.

factors. His many private virtues shed luster upon his public character. A life thus commenced by services and sacrifices in the cause of civil liberty, and well sustained to its end by unremitting labors directed with singleness of purpose to the public good, should be held in just remembrance by those among whom it was spent, and presented as an encouraging example to posterity.[23]

W. L. MARCY.

Albany, January 6th, 1835.

SPECIAL MESSAGES.

January 7. To the Assembly: Transmitting the annual report of the Commissary General.

January 10. To the Assembly: Transmitting a resolution adopted by the Legislature of Maryland, approving the New York resolution relative to the organization of the militia.

January 16. To the Assembly: Transmitting a report from the Commissary General relative to arms and ammunition issued for use in the city of New York on the requisition of the mayor at the time of the riots in that city in July, 1834.

January 21. To the Assembly: Transmitting the annual report of the Adjutant General.

April 1. To the Assembly:

"GENTLEMEN.— Under the authority of the Government of the United States, a preliminary survey of a route for a railroad has been made from Williamsport in the State of Pennsylvania, to Elmira in this State. Pursuant to directions contained in a resolution of one branch of the National Legislature, (the House of Representatives,) the Secretary of War has transmitted to me a copy of the

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[23] William Campbell was chosen surveyor general in place of Simeon De Witt, deceased.

report and drawings made by Major Bache of the United States Corps of Topographical Engineers, by whom the survey was executed. I herewith send to you the same, with the communications to me on the subject.

W. L. MARCY."

Albany, April 1, 1835.

April 15. To the Senate:

Veto of a bill entitled "an act regulating the weighing of merchandise in the city of New York."

"The objections to which I wish to direct your particular attention relate to the operation and effect of the tenth and sixteenth sections of the bill. The common council of the city of New York have for a long time possessed and exercised the power of appointing weighmasters for that city, and the bill under consideration does not propose to take away that power. I do not question the right of the Legislature to make such regulations relative to the duties of these officers as the interest of trade and commerce or the general good may require. The bill before me proposes to appoint, on the nomination of the Governor, with the advice and consent of the Senate, weighers for that city. If it should become a law, there will then be two sets of officers, (one receiving their appointments from the State, and the other from the common council,) to do the business of weighing in that city. The bill before me makes a designation of duties, or rather limits the officers appointed by the common council, to weighing only such merchandize as 'is required or intended for immediate consumption in the city of New York.' Neither the right or the expediency of making a designation of their respective duties is the ground of objection; but it is extremely important, not only to the officers themselves, but to our citizens who may employ them, that the boundary which is to limit the exercise of

their respective powers should be obvious and clearly defined. Such a boundary is necessary to remove doubts and uncertainty, and to prevent litigation and a conflict of authority. It does appear to me that the boundary or designation of duties established by this bill is not so obvious and certain as the nature of the subject requires. The expression 'merchandize required and intended for consumption' does not designate with sufficient precision and certainty the objects to which the duties of the weighmasters of the city of New York are, by this bill to be confined. But it is still more important that these weighmasters should not be subjected to penalties without having the means of certainly knowing when they incur them. They, as well as all other persons, (except the owners of the articles, or those in their employment, and who are not commissioned weighers,) are subjected, for weighing for hire, pay, or reward, to a penalty of one hundred dollars for each offence, unless the merchandize weighed by them 'is required and intended for immediate consumption in the city of New York.'

The strong objection in my mind to this provision is, that the weighmasters appointed by the city authority may incur a penalty when they have not the means of knowing that they do so; that the merchandize which they are called on to weigh is required and intended for immediate consumption in the city may not always be known by the owners, and in most instances cannot be certainly known by the weighmaster. The intended destination of the property can only be known to the owner or buyer, and yet the weighmaster, for not knowing their intentions, may incur the penalty imposed by the tenth section of the bill before me.

I think it not improper to remark that the language of this section is not sufficiently qualified to remove all doubt from my mind as to its operation upon the inspector of flour and the inspectors of some other articles. It is the

flour inspector's duty to weigh in order to detect fraud and imposition in the tare of the barrel or short weight in the flour, and he is in certain cases allowed fees for weighing; and if this law should go into effect, it may be a matter of doubt whether he would not incur the penalty inflicted by this section, if he should receive these fees. It is not, in my judgment, expedient, nor do I presume it was intended, to withdraw any of the inducements which this officer now has to protect the public against imposition in relation to this important article of trade.

I am not without apprehensions that I give an ampler scope and greater effect to the sixteenth section of the bill before me than was intended; but in judging of the construction it will receive, I can only regard the import of the language used. In the most explicit and unqualified terms it declares, that 'the weighmasters appointed by the common council of the city of New York should conform to all the provisions of this act, under a penalty of one hundred dollars for each violation thereof.' It seems to me to be not only a fair but an unavoidable inference, that the weighmasters, in performing the duties allowed them, must conform to all those provisions which regulate the conduct of the weighers to be appointed by this bill. If this be the construction of the section, then the weighmasters appointed by the common council will be placed under the supervision of the weigher-general, and bound to comply with his orders to the same extent as the weighers; they will be required to take the allotment of their business from him, and make duplicate returns to him of the weight of all articles which shall be weighed by them.

As the weighers to be appointed by this bill are required to pay to the weigher-general five per centum on the amount of fees received by them for weighing, it appears to me, by a fair construction of the sixteenth section, that the weighmasters appointed by the common council will

also be obliged to pay to that officer the same percentage on the amount of their fees. It would without doubt, greatly embarrass the business to which the city weighmasters are to be confined, to subject them to all the regulations, both in regard to the allotment of duties and to making specific returns, to which the weighers are subjected by this bill; nor do I think it expedient that the weighmasters should be compelled to contribute any portion of their fees to compensate the weigher-general for his services. Not being able to give a construction to the sixteenth section of this bill which will not result in these consequences, I deem it, on that account, objectionable."

The bill was not passed over the veto.

May 11. To the Assembly:

Veto of a bill entitled "an act authorizing the mayor and common council of the city of Rochester to raise money by tax, for the purpose of erecting a market, and for other purposes."[24]

"I have not been able to satisfy myself that it has been passed in the manner required by the Constitution.

This bill proposes to confer on the mayor and common council of the city of Rochester, a power or authority which they do not now possess; and, in my opinion, therefore, it falls within the description of bills, which require the votes of two-thirds of all the members elected to each branch of the Legislature to be given in favor of them, before they can be passed.[d]

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[24] The Rochester market bill was passed over the veto, and became chapter 297 on the 11th of May.

By the second constitution, article 7, section 9, a corporation act must have received the assent of two-thirds of all the members elected to each house. By the same constitution, article 1, section 12, a bill could be passed over the Governor's veto by the affirmative vote of two-thirds of the members of each house present at the time the vote was taken, which made it possible for a bill to be passed over a veto by a vote smaller than that required on its original passage.

[d] Const. 1821, art. 7, § 9.

The first section of the bill authorizes the mayor and common council of the city of Rochester to assess and collect ten thousand dollars, and to appropriate it to the erection of a new market.

The second section authorizes them to sell the premises now occupied as a market, and to appropriate the avails of the same to the purchasing of a site, &c. for erecting a new market thereon.

It appears to me that each of these sections enlarges the powers of the mayor and common council; and if so, they must be considered as altering a body politic or corporate; and consequently the bill containing them cannot be considered by me as duly passed, unless it appears by the certificate of the presiding officer of each branch of the legislature, that two-thirds of all the members elected to each voted in favor thereof. The bill does not furnish that evidence, and I cannot therefore regard it as having passed by the votes of two-thirds of the members elected.

Not having received the bill until this morning, I have not had an opportunity to examine minutely the former course of legislation on like subjects; but I find several instances in which similar bills have been regarded as two-third bills, and none of like character that have been passed as majority bills. 'An act authorizing the trustees of the village of Buffalo to raise money by tax, for the extinguishment of fires,' (Sess. 1832, chap. 147) was passed as a two-third bill; also the 'Act for the further support and extension of common schools in the city of New York,' passed at the same session, (chap. 119) was regarded as a two-third bill. It is true that I find several laws in the statute books, passed as majority bills, which authorize the mayor, recorder and aldermen of the city of New York to raise money; but in each one of them (thus passed) which I have examined, the authority is expressly given to

them as supervisors of the city and county of New York. I am therefore inclined to believe that this fact was made a ground of distinction as to the application of that clause of the Constitution, requiring in certain cases the votes of two-thirds of all the members elected to pass a bill. I do not find that the boards of supervisors of the counties have ever been considered a body politic or corporate, within the meaning and operation of that clause of the Constitution.

At the same time that the bill now under consideration was transmitted to me by you, I received from you another, entitled 'An act to authorize the raising of money for the support of the Lancaster school in the city of Hudson.' This bill simply empowers the mayor, recorder and commonalty of the city of Hudson to raise four hundred dollars by a tax, and directs them to pay the money over to the trustees of the Lancaster school, who are required to apply the same for the support of it. This act was passed by you as a two-third bill; if it was so, or if either of the others to which I have referred was a two-third bill, then the one under consideration is undoubtedly of that character.

Believing it to be a two-third bill, I return it to you as one sent to me without having been passed by the Assembly in the manner required by the Constitution.

I have not the slightest objection to the provisions of the bill; and shall, if it duly passes by the constitutional vote of two-thirds of the members of both branches of the Legislature, most cordially give it my approval."

May 11. The Legislature adjourned without day.

1836. JANUARY 5. LEGISLATURE, FIFTY-NINTH SESSION.

WILLIAM L. MARCY, Governor.

ANNUAL MESSAGE.

FELLOW CITIZENS.— You are entrusted with the legislative authority of the people of this State, at an auspicious period in their affairs. Whatever is essential to the full enjoyment of civil and political rights, is placed within their reach by the free principles of their government. In the dealings of a kind Providence with them, they are permitted at this time to enjoy, in a liberal measure, the blessings which contribute to individual comfort and public prosperity. To our admirable form of government, to the wisdom of past legislation, and especially to the favorable regards of the Sovereign Ruler of Nations, ought we, in humble gratitude to Him, to ascribe our happy condition.

Until within a few days, wherever we directed our view throughout this flourishing commonwealth, we saw only gratifying evidences of unexampled prosperity; but we have now to lament that a portion of our constituents have been recently visited by a severe calamity. A conflagration, unprecedented in the history of this continent, and rarely exceeded in the past ages of the world, has consumed many millions of property, and laid in ruins an extensive district of our commercial metropolis. Destructive as this calamity has been to the fortunes of individuals, and extensive as its influence may be upon the general prosperity of the State, let us not yield to the desponding belief that we shall not soon recover from its effects. Though the sufferers have lost their property, they have not lost everything. Their enterprising spirit and irrepressible energies still remain; their business relations are suspended, but not dissolved; their character as honorable merchants, and their capacity for business, fortunately are posses-

sions beyond the reach of the devouring element. With these possessions, aided by the advantages which it is reasonable to expect will be liberally offered to them, they will soon resume their wonted pursuits under favorable auspices, and in a short time, it is believed, repair their losses.[1]

Notwithstanding the disaster which has befallen this portion of your constituents, you enter on your legislative duties when the general condition of the State is unusually prosperous; but these duties are not, in my opinion, thereby rendered less responsible or less difficult to be performed. A high state of prosperity is not generally less fruitful than a season of adversity, in developments which deserve the attention of the Legislature. Many defects in existing laws and institutions are then disclosed, which it requires the profoundest wisdom to correct. Such a conjuncture as the present seems to be a peculiarly appropriate time for reviewing the course of past legislation, and making needful reforms; for looking forward, and preparing our systems for the future exigencies of the State. Relieved, as you are, from the labor of guarding against external dangers, or repressing civil commotions, your minds are left free to mark the progress, and consider the tendency of our present establishments; to

[1] Senate Document No. 2, contains the communications relating to the New York fire which occurred on the 16th and 17th of December, 1835. The loss was estimated at $20,000,000.

The following laws were passed in consequence of the fire. Chapter 2, passed January 16, authorizing the city of New York to raise $6,000,000 for the purchase of bonds and mortgages held by insurance companies which had become insolvent in consequence of the fire; Chapter 3, passed January 18, "for the more convenient adjustment of the affairs of certain insurance companies in the city of New York, rendered insolvent by the late fire in that city; chapter 21, passed February 6, authorizing the city to loan to banks portions of the $6,000,000 authorized by chapter 2, which were not used for the purchase of bonds and mortgages as therein provided; chapter 24, passed February 12, for the benefit of certain insurance companies in New York which had become insolvent or whose capital had become impaired in consequence of the fire. See special message of January 6th.

check the operation of evil principles before they have produced their bitter fruits, and to give a right direction and efficient action to principles of an opposite character.

It is to be feared that the constitutional provisions relative to our judiciary system, will not permit it to be so expanded as to meet the public wants. The vast increase of business in our higher courts has demonstrated their inadequacy, under their present organization, to discharge the onerous duties devolved on them; and something must therefore be done for the public relief. If this relief cannot be obtained by the modification of the existing courts, or an enlargement of the system on the present basis, then your attention should be directed towards procuring an amendment of the Constitution. The importance of providing for a speedy administration of the laws, and the urgent demands for a system every way competent to this object, will, I trust, ensure some decided action on this subject at the present session of the Legislature.[2]

In a government like ours, which emanates from the people, where the entire administration in all its various branches is conducted for their benefit and subject to their constant supervision and control, and where the safety and the perpetuity of all its political institutions depend upon their virtue and intelligence, no other subject can be equal in importance to that of public instruction, and none should so earnestly engage the attention of the Legislature. Ignorance, with all the moral evils of which it is the prolific source, brings with it also numerous political evils, dangerous to the welfare of the State. It should be the anxious care of the Legislature to eradicate these evils by removing the causes of them. This can be done effectually only by diffusing instruction generally among the people. Although much remains here to be done in this respect, the past efforts of legislation upon the subject merit

2 Several judiciary amendments were proposed, but none were adopted by both houses.

high commendation. Much has been already accomplished for the cause of popular education. A large fund has been dedicated to this object, and our common school system is established on right principles. But this is one of those subjects for which all cannot be done that is required, without a powerful co-operation on the part of the people in their individual capacity. The providing of funds for education, is an indispensable means for attaining the end; but it is not education. The wisest system that can be devised cannot be executed without human agency. The difficulty in the case arises, I fear, from the fact that the benefits of general education can only be fully appreciated by those who are educated themselves. Those parents who are so unfortunate as not to be properly educated, and those whose condition requires them to employ their time and their efforts to gain the means of subsistence, do not, in many instances, sufficiently value the importance of education. Yet it is for their children, in common with all others, that the common school system is designed; and until its blessings are made to reach them, it will not be what it ought to be. If parents generally were sensible of the inestimable advantages they were procuring for their children by educating them, I am sure the efforts and contributions which are required to give full efficiency to our present system, would not be withheld. If I have rightly apprehended the indications of public opinion on this subject, a more auspicious season is approaching.

At this time, a much larger number of individuals than heretofore, are exerting their energies and contributing their means to impress the public mind with the importance of making our system of popular instruction effective in diffusing its benefits to all the children in the State. I anticipate much good from the prevalence of the sentiment that the efforts of individuals must co-operate with the public authorities to ensure success to any system of general education.

The Press, that powerful engine in moving and controlling public opinion, is at this time, and much more so than formerly, directed to this subject, and it will undoubtedly have a salutary influence in advancing the cause of popular instruction.

The difficulty of supplying the district schools with competent teachers, has presented the greatest obstacle to the complete success of our system. A beginning has been made with a view to the removal of this obstacle. A separate department for the instruction of common school teachers has been established in one of the principal academies in each of the eight senate districts of the State, and public funds have been appropriated towards the support of these departments. That this measure cannot be otherwise than highly beneficial to the common schools, may be confidently anticipated.

The law of the last session of the Legislature authorizing the inhabitants of each school district to impose a very light tax upon themselves for the purpose of providing a district library, is a measure well calculated to aid the cause of public instruction. I have not the means of knowing to what extent the districts have acted under it, but I sincerely hope that they are generally disposed to avail themselves of its wholesome provisions, and to commence establishments from which it is reasonable to expect beneficial results. Although this matter is left at the option of the several districts, yet the usefulness of such libraries is sufficiently obvious to induce a belief that the law will have nearly the same effect as if it had been made obligatory on them to use the powers it confers.

Reports have been received for the year 1834, by the Superintendent of Common Schools, from all the towns and wards in the State. The number of school districts therein is ten thousand one hundred and thirty-two, and the number of children five hundred and forty-three thousand and eighty-five, of whom five hundred and forty-one

thousand four hundred and one have received instruction in the common schools. The public moneys distributed to these schools amount to three hundred and twelve thousand one hundred and eighty-one dollars and twenty cents, including the one hundred thousand dollars derived from the income of the common school fund, and eighteen thousand six hundred and twenty dollars and ninety-two cents from local funds belonging to particular towns. The residue was raised by taxation on the property of the several towns and cities. A further sum of about four hundred and twenty thousand dollars was also paid by the inhabitants of the several districts. The aggregate amount of these sums, seven hundred and thirty-two thousand one hundred and eighty-one dollars and twenty cents, (except a few thousand dollars expended in the city of New York upon school houses,) was paid for teachers' wages. The whole amount of expenditures on account of common schools in this State, for the year 1834, was at least one million three hundred thousand dollars.

Our academies and seminaries of learning are objects of great public interest, and worthy of the fostering care of government; particularly so in regard to their agency in supplying to some extent, the demand for common school teachers. There are many of high character and of extensive usefulness, that are not under the supervision of the Regents of the University, and consequently receive no aid from the Literature fund. I have not the means of ascertaining their number or their particular condition. There are sixty-eight academies subject to the visitation of the Regents, and all but five of them made reports to the Regents last year. The whole number of students receiving instruction in them at the date of these reports, was five thousand two hundred and ninety-six; the amount of tuition paid by them in 1834, was seventy-three thousand four hundred and seventy-two dollars; and the real and personal property owned by these academies, includ-

ing philosophical apparatus and libraries, amounted to five hundred and seventy-one thousand four hundred and seventy dollars.

There are seven colleges in this State, including the two medical institutions. Hamilton and Geneva colleges have had to struggle with difficulties for want of a more liberal endowment. The plan of the University of the city of New York, is, in many respects, similar to that of the most extensive universities on the continent of Europe, and contains arrangements for imparting instruction on many other subjects than those usually embraced in the ordinary collegiate course. This institution is in its infancy, and many parts of its plans are not yet put in execution. It is, however, reasonable to hope that it will in due time fulfill the expectations of its founders. Columbia and Union colleges are both in a very flourishing condition.

Our penitentiaries continue to present very favorable results. The number of convicts in the Auburn prison is a very little larger than that of the last year. The number in the Mount Pleasant prison has been very much reduced. On the thirtieth day of September last, it was forty-five less than on that day in the previous year, and the number received in 1835, from the counties that are required to send their convicts to this prison, was also forty-five less than was sent from the same counties in 1834. The whole number of convicts in both prisons on the first of December last, was one thousand four hundred and fifty-one.

The earnings and profits of the Auburn prison during the last fiscal year, exceed the expenses for general support and ordinary repairs seven thousand three hundred and eighty-eight dollars and thirty-eight cents. Of this sum there have been expended on buildings and for machinery, in payment of fees to sheriffs for transporting convicts, under the act in relation to the State Prisons, passed at the last session, and for expenditures on a few other unusual objects, five thousand six hundred and fifty-six dollars

and ten cents. The officers of the Auburn prison estimate the sheriff's fees, which by that law are to be paid from the earnings of the convicts, at more than seven thousand dollars, and they are apprehensive that this additional charge upon, and the diminution of, the income, which will result from that law, will make an appropriation from the treasury to some extent necessary to defray its expenses.

Creditable as this statement is to those who have managed this institution, the prison at Mount Pleasant presents still more successful results. The moneys received for the earnings of the convicts in this establishment, including ten thousand dollars for work done for the State, for which payment has not been required, amount to eighty-five thousand one hundred and sixty-four dollars and forty-two cents, and the expenses for general support have been only fifty-six thousand three hundred and sixty-one dollars and six cents. It should be recollected that this prison defrays the expense of supporting the female convicts. After deducting the sum paid for this object, and for building materials, which together amount to five thousand five hundred and ninety-six dollars and twenty-nine cents, the surplus earnings of this prison for the past year are twenty-three thousand two hundred and seven dollars and seven cents.

When the old contracts shall have expired, the new direction which the law of the last Legislature gives to the labor of the convicts will undoubtedly cause a considerable reduction in the amount of their earnings. The officers of these prisons have, as by this law they are required to do, given their attention to the subject of introducing the manufacture of silk, but not much has yet been done towards effecting it. The expense attending the introduction of this kind of manufacture, will be so great that I fear it cannot be done in a manner to ensure its success, without an appropriation for this object from the treas-

ury. In relation to the Auburn prison, such an appropriation will be indispensable. The officers of both prisons have, pursuant to the late law, begun to cultivate the mulberry and have already about fifteen hundred trees growing on the State property adjacent to the prisons.

With the exception of the varioloid, which prevailed among the prisoners at Mount Pleasant for a short time last spring, the inmates of both prisons have enjoyed more than an usual degree of health, and have conducted themselves in an orderly manner.

I am fully persuaded that if better means were provided for punishing petty offenders in a proper manner, the number of crimes which are punishable by labor and confinement in the State prisons, would be greatly diminished; and with a view to effect this desirable object, I have repeatedly called the attention of the Legislature to the condition of our county jails. Referring you to the remarks in my former messages on this subject, I again present it as worthy of your favorable consideration.

In the course of the present year, the laws making most of the appropriations to the two institutions for instructing the deaf and dumb, will expire. The charter of the asylum located in the city of New York, will also expire in 1837, and that of the Central Asylum in a few years thereafter. I presume that it will not be within the views of the Legislature to withdraw the public patronage from this unfortunate class of our fellow citizens, or to suffer these valuable institutions to go out of existence. They have both fulfilled public expectation. The New York Institution is, in all respects, one of the best in the country. The approaching events to which I have alluded, render it necessary for you to give your attention to this subject at the present session. The policy of consolidating them, and making a single institution, adequate to the wants of

the whole State, is respectfully submitted to your consideration.[3]

With the fullest conviction that it is the duty of the government to give to the insane, and especially to the insane poor, for whom as yet comparatively little has been done, the benefit of a proper institution, I most earnestly call your attention to the subject. In my annual message of 1834, I presented my views of the strong claims which this forlorn class of our fellow beings have upon the Legislature for its assistance, and the great public and individual advantages which would result from a well regulated institution of this kind. To these views I refer you with an urgent request that you will not suffer this session to pass without satisfying a claim supported by so many and such powerful considerations.[4]

It is now ten years since the discontinuance of the State tax. The General fund then accumulated, with an inconsiderable income from other sources, besides paying two hundred and ninety-four thousand one hundred and eleven dollars and sixty-nine cents for the support of the lateral canals, and many large appropriations for other objects, has sustained the ordinary expenses of the government far beyond the period anticipated when the State tax was discontinued. This fund is now not only exhausted, but the State at the end of the last fiscal year, was in debt to other funds for the current expenses of the treasury, four hundred and six thousand and sixty-eight dollars and ninety-seven cents.

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[3] The charter of the New York Institution for the Instruction of the Deaf and Dumb was renewed by chapter 228, passed April 30, and it was authorized to receive three additional indigent pupils from each Senate district.

Provision for the discontinuance of the Central Asylum for the Instruction of the Deaf and Dumb at Canajoharie, was made by chapter 511, passed May 26, which authorized the sale of its property, and the transfer of its inmates to the New York Institution.

[4] Chapter 82, passed March 30, provided for the appointment of commissioners to select a site for a state lunatic asylum. The institution was located at Utica.

In consequence of the recent amendment of the Constitution,[a] the income from auction and salt duties, after July next, will be paid into the treasury of the State to the use of the General Fund. If this fund were relieved from the support of the lateral canals, the receipts of the present year, in the opinion of the Comptroller, would be nearly adequate to the ordinary expenses of the government. The amount required for those canals, increased as it will be by the Chenango canal, will, I hope, be provided by some system of finance applicable to internal improvements generally; but if it should not be, I trust the ability of the treasury to meet these demands will not be supplied by the generally and justly condemned policy of borrowing money for that purpose, without, at the same time, providing a revenue sufficient ultimately to pay both the interest and principal of the debt.[b]

The productive capital of the common school fund is one million eight hundred and seventy-five thousand one hundred and ninety-one dollars and seventy-one cents. Its income during the last fiscal year, was one hundred and thirty-four thousand dollars. This income exceeds the estimated amount about twenty-six thousand dollars, and is considerably larger than it will be in future years. It will not, however, fall in any year much short of one hundred and ten thousand dollars. The distribution to the common schools may therefore be permanently raised to one hundred and ten thousand dollars annually, as soon as an apportionment can be made under the census recently taken.

The Literature Fund is two hundred and sixty-five thousand three hundred and forty-two dollars and eighty-

[a] Const. 1821, art. 7, § 10; Am. 1833, 1835.

[b] By chapter 356, passed May 16, commissioners of the canal fund were required to loan annually to the State treasury for the general fund $400,000, from any surplus on hand after a sufficient amount had been collected and safely invested to pay the principal and interest of the debt created for the construction of the Erie and Champlain canals.

seven cents, and produced an income last year of fifteen thousand seven hundred and thirty-six dollars and twenty-five cents.

The Bank Fund at the close of the fiscal year, was four hundred and seven thousand and ninety-four dollars and ninety-nine cents, and the payment due on the first instant will add to it one hundred and thirty thousand dollars.

The great importance of internal improvements is conceded by all; and the claims of the several parts of the State to participate in them, so far as they afford capabilities and offer advantages, cannot in justice and fairness be contested. I have repeatedly expressed my anxious desire to have the State progress in the career which has been so honorable and advantageous to it. I have described the character of such works as, in my opinion, should be executed by the State, and directed the attention of your immediate predecessors to those particular undertakings which seem to be most earnestly desired by our constituents.

For a full exposition of my views on all these points, I take the liberty to refer you to my previous communications to the Legislature. I have not been without apprehensions, and I still entertain them, that internal improvements cannot be long prosecuted on an extensive scale unless sustained by a wise system of finance. No new work can be executed without using the public credit, and however high that credit is at this time, it cannot be liberally used and long upheld without some financial arrangement that will inspire confidence at home and abroad. If we look at the works undertaken in this State since the commencement of the Erie and Champlain canals, or at those in other states, as furnishing the means of an enlightened judgment, we ought not to conclude that any great enterprise of this kind now in contemplation will, at its comple-

tion, or within any short period thereafter, yield a sufficient revenue to defray the expenses of its maintenance, and pay the interest on the debt contracted on its account; nor is it necessary, according to the views I have heretofore presented on this subject, that such a result should be anticipated from any proposed public work to warrant your favorable action upon it. But a work that does not produce such a result will impose a burden which must be sooner or later discharged. To suppose that your constituents require you to engage in the construction of any public work, and at the same time decline to bear that portion of the burden of it which fairly belongs to them, is not doing justice to their good sense and intelligence.

I have heretofore expressed, and I deem it appropriate now to repeat, my regret that we have departed from the wise system in relation to finance under which our first public works were commenced, to the evident detriment of the general cause of internal improvements. The improvident practice of borrowing money without providing available funds for paying the interest has already been carried to a point beyond which it cannot be pushed without producing serious mischief. That this practice has not yet impaired our public credit, is to be ascribed to the fact that heretofore the treasury has been in a situation to meet the demand for the interest without relying, to any considerable extent, on loans for that purpose; but that can be done no longer. On a part of the debt already contracted for internal improvements, the interest can only be paid by new loans, unless you resort to taxes of some kind; and such will most certainly be the case in relation to any additional debt you may create. The surplus revenues of the Erie and Champlain canals cannot be applied to this object within nine years, and after the expiration of that period only to a limited amount, if at all, for several years thereafter. These revenues are by the constitutional

pledge,[b] placed wholly beyond your reach until the year 1845, and all but the annual sum of three hundred thousand dollars is already appropriated during twelve years at least, for the enlargement of the Erie and Champlain canals.

This condition of things is not presented for the purpose of discouraging your efforts in the cause of internal improvement, but because it is a difficulty that inseparably belongs to this subject, and if not removed, will greatly impede our onward course.

The suggestion, that we are to discontinue this system, will not I confidently trust, be heard from any quarter. Yet very few, I should hope, would advocate the reckless policy of contracting a debt, even for such an object, and constantly and rapidly accumulating it by loans to pay the interest. I am sure our credit would ere long sink under such a policy. If at a period of unusual prosperity, with resources most abundant and unincumbered, with no demand for extraordinary expenditures on objects which can never be productive, the people are unwilling to submit to any burden whatever for the purpose of providing even for the interest on the debt they are creating for substantial and enduring improvements, conferring on themselves direct and incidental advantages, what good reason can be given to those who have capital to loan, to induce them to believe, that our successors will promptly pay not only what is properly left for them to pay, but also that which in justice and good faith should have been paid by us? Can we with propriety ask capitalists to put faith in our contracts on the ground that the people in some future age will do what we decline to do, burden their resources to pay the interest which in our time we suffered to accumulate on the debts we have contracted? Can we claim the continuance of public confidence on the assumption

[b] Const. 1821, art. 7, § 10.

that a future generation will take better care of public credit than we are willing to do?

There is another point of view in which this policy appears to me to be extremely objectionable. It violates the great principle of justice in regard to future generations. I must not be understood to maintain the position that the people of the present day should furnish the means of reimbursing the loans that they may make for the purpose of internal improvements. These improvements will be left for the benefit of future ages, and I see no injustice in transmitting to them the obligation to contribute a fair proportion towards the expenses. But we also derive great and immediate benefits from such works; and a portion of these expenses should, therefore, be paid by us. If we borrow the money to defray them, and also borrow to pay the interest on the debt, we take the benefits without the burden. On the supposition that a public work does not for fifteen years produce an income more than sufficient to keep it in repair, the debt contracted for its construction will at the end of that period be doubled, if it be increased by loans to pay the interest. Those who at that time have the benefit of such an improvement, will take it encumbered with a debt amounting to twice the sum that it would cost them to make it for themselves. We should reflect, that if we prosecute public works with vigor, we shall not accomplish all that is to be done. Each successive age will doubtless be an age of improvement in this respect, and the people of each will be required to contribute from their means to such objects. I fear we are not sufficiently conscious of the peculiar felicity of our own times, if we indulge in anticipations that those which are to succeed will, like the present, be wholly exempted from the foreign wars and domestic troubles which wither the energies and impair the resources of nations; that Providence will be as liberal in its bounties to our successors as it has been to us; and that our civil and political

institutions will, at all times hereafter, exert the same benign influence as they do now upon the public welfare. We cannot reasonably expect that any future generation will be more willing or more able than we are to bear public burdens, and I can conceive of no reasons that can justify us in transferring to them any part of the share of such burdens that should be borne by us.

If you concur in these views, you will regard it as your duty to provide a certain revenue that will at least be sufficient to pay the interest on the public debt already created, for which no provision is now made, and also on any additional debt you may authorize to be contracted. This can be done by augmenting the receipts into the treasury, so as to leave a surplus, after paying the ordinary expenses of the government and other appropriations, fully equal to the amount that may be required to pay the deficit of interest on the public debt; or by an explicit and effective appropriation of the future surplus revenues of the Erie and Champlain canals. The occasion seems now to require you to determine the grave question, whether the surplus revenues of these canals shall or shall not be appropriated to the support of other works of internal improvement. The Oswego, Cayuga and Seneca, the Crooked Lake and Chemung canals are all in full operation; and we have already drawn from the public treasury for their support, two hundred and ninety-four thousand one hundred and eleven dollars and sixty-nine cents beyond the income received from them. The Chenango canal will much increase the amount required from the treasury for the support of the lateral canals. The Treasury is entirely exhausted, and you are therefore required to provide for the support of these canals, and to pay the interest on the debt contracted on their account for the present year, more than one hundred thousand dollars. If you do not, and I trust that you will not, provide for the payment of this sum by a further loan, and thereby increase the ex-

isting debt without pledging a revenue sufficient to pay it, you will then have only the alternative of levying a tax of some description to raise a sufficient revenue for this purpose, or of borrowing on the specific pledge of the surplus revenue from the Erie and Champlain canals. If the sum of three hundred thousand dollars of the surplus revenues from these canals, reserved by the law providing for the enlargement of the Erie canal, is left without such a pledge, there will be no certainty that it will be applied to pay the debt, which must, without taxation, be accumulated to support the other canals. It therefore seems to be necessary that you should determine, at this present session, the question of appropriating the surplus revenues of the Erie and Champlain canals to sustain and carry forward other works of internal improvement. [See note 5.]

It is estimated by the Commissioners of the Canal Fund, that the deficit in the revenues of the lateral canals will be one hundred and twelve thousand three hundred and twenty-eight dollars and thirty-seven cents for the present year. The same state of things will exist in subsequent years, and the amount of the deficit will be increased with the increase of debt for new works. I am persuaded that the dictates of an enlightened policy will urge the establishment of a distinct system of finance applicable to this subject, whereby a fund will be provided adequate in amount at least to satisfy the demands for interest on the debts that are and may be created, and all other expenses, except the reimbursement of the principal borrowed for the construction of public works. I particularly recommend the adoption of such a system, because I am convinced it will have a salutary influence on the general cause of internal improvement.

I have received a communication from the president of the board of directors of the New York and Erie Railroad Company, together with other documents relative to the extensive and useful enterprise they have undertaken. As

the principal documents have been heretofore printed, I presume they are in the possession of the members of the Legislature; and I have not therefore transmitted them with the accompanying letter of the president to which I refer you for information respecting the proceedings and views of this company. It appears by the communications I have received, that the subscriptions to the stock already obtained amount to two millions three hundred and eighty-two thousand one hundred dollars; and that more than twenty-seven thousand dollars had been expended, principally for surveys, previous to the first of October last. Since that time, forty and a half miles have been put under contracts about fourteen per cent below the estimated expense, and the company entertain a confident opinion that the whole work will be executed and put in operation for six millions of dollars. The magnitude of the undertaking; the public benefits it will confer, and the deep interest felt by the inhabitants of the sections of the State through which this extensive line of communication is to pass, will induce the company again to ask the aid of the Legislature. The mode and amount of the assistance which the State ought to contribute towards the accomplishment of this work, will deserve your mature consideration, uninfluenced by any other views than such as are inspired by a comprehensive regard for the public good.[6]

The canals continue to increase in productiveness. The total amount of tolls collected on them during the year ending the thirtieth of September, was one million four hundred eighty-five thousand seven hundred and seventy-five dollars and nine cents. The income from the tolls and all other sources of revenue during that year, was one million nine hundred and sixty-two thousand five hundred and

[6] By chapter 170, passed April 23, provision was made for aiding the New York and Erie Railroad Company to the extent of $3,000,000 by state stock to be issued at different times, and on the completion of specified portions of the road. The loan was to bear interest at 4½ per cent and was to be deemed a mortgage on the real property of the company.

twenty-three dollars and twelve cents. The disbursements for repairs and collection of tolls for the same time, were five hundred and five thousand seven hundred and eighty-eight dollars and seventy-eight cents, and the entire expenses on all accounts, including the interest of the canal debts, amounted to eight hundred and thirty thousand three hundred and fifty-three dollars and sixteen cents.

In January, 1833, the debt created for the construction of the Erie and Champlain canals, was a little more than seven millions, a part of which was reimbursable at the pleasure of the government after July, 1837, and the residue after July, 1845. At that time the Commissioners of the Canal Fund began to purchase and cancel the stock of this debt. On the 30th of September last they had paid out for this purpose, nearly three millions of dollars, and yet had a surplus of the fund on hand amounting to three millions four hundred and six thousand eight hundred and nine dollars and seventy-two cents. By the first day of July next, the surplus will be quite sufficient to extinguish that debt, which is now four millions three hundred and forty-nine thousand six hundred and thirty-four dollars and eighty-five cents. If such should be the case, the income derived from auction and salt duties, will then be transferred by the recent amendment of the Constitution, from the canal fund to the treasury for general purposes.[e]

Pursuant to the directions of the law passed at the last session of the Legislature, the Canal Board has settled the plan for enlarging the Erie canal. According to this plan, the canal is to be made seven feet deep and seventy feet wide on the surface of the water. All improvements now required on the line of this canal, will be made with reference to its enlargement. Measures have already been taken to change the location of the aqueduct across the Genesee River at Rochester, and to construct the new one on this principle. When this canal is enlarged according to the

[e] Const. 1821, art. 7, § 10; Am. 1835.

proposed plan, it is presumed that boats carrying one hundred tons of freight will pass on it with facility. No very accurate estimate has yet been made of the expense of this work, but it will probably exceed twelve millions of dollars, including damages for individual property which must be taken for that purpose.

The amount of the appropriation for this work will not probably much exceed one million dollars annually; it will not therefore be completed in less than twelve years.

Notwithstanding the business has increased on the Oswego, Cayuga and Seneca, Crooked Lake and Chemung canals, the tolls have not been sufficient to defray the expenses of collection and repairs, and pay the interest on the debts contracted for their construction. For the year ending on the 30th of September, the deficiency in the revenue to meet these expenses, was forty-four thousand four hundred and sixty-four dollars and thirty-nine cents, which has been paid out of the treasury.

Unforeseen difficulties have retarded the work on the line of the Chenango canal, and apprehensions are entertained that it will not be entirely completed during the next season. Great care has been taken to construct this work so as to give it permanence, and the expense of it will probably exceed the present appropriations which amount to one million eight hundred and sixty thousand dollars. No fund whatever, except the premium on the loans, has been provided for the payment of interest on this debt, that can be available till after July, 1845. The premium on the first loan of one million dollars has been already exhausted, and that which may be received on the loan of eight hundred and sixty thousand dollars, will not probably be sufficient to pay the interest on that portion of the debt for more than two years. You ought, therefore, to make provision for paying the interest on the million loan, and eventually on that of eight hundred and sixty thousand dollars. It is not now anticipated that after the canal is

completed and in full operation, the necessity of such a provision will be superseded.[7]

Goods usually arrive through the Erie canal at Buffalo in the spring, destined for the country farther west, several days before the lower part of Lake Erie is clear of ice. This occasions delay in forwarding them on, and has a tendency to divert the trade to the west from our channels of communication. It is worthy of your consideration, whether the inconvenience and injury arising from this cause is not of sufficient magnitude to make it a measure of good policy to extend our present line of internal communication from Buffalo to some point on the shore of Lake Erie, where the lake would be likely to be free from ice as early in the spring as the navigation of the canal may be opened.

I have heretofore expressed my decided opinion against the policy of legislating on subjects that needlessly interfere with the ordinary pursuits of our fellow citizens. These pursuits should be left wholly unembarrassed by any regulations whatsoever, except such as are obviously required to prevent abuses and promote some manifest public good. I recommend that you should entirely abstain from granting charter privileges, to be used in transacting such kinds of business as are prosecuted by individuals, and which can be conducted as well by them as by incorporated companies. The association of capital for such objects with corporate privileges, subjects individuals engaged in the same or similar pursuits, to an unfair and injurious competition.

In regard to incorporations of a more general character, the public necessities and the public interest will

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[7] By chapter 464, passed May 25, the canal commissioners were authorized to borrow $260,000 to be used in continuing by contract the construction of the Chenango canal. The same act contained provisions relative to the relief of persons who had contracted for the construction of different parts of the canal.

indicate your duties, and beyond what these considerations demand, you will not, I presume, feel any inclination to multiply them.

In my last annual message, I communicated my views in relation to corporations which have a connection with, and an influence on, our currency, and so far as those views apply to the present condition of the State, I wish to be considered as presenting them again to the Legislature. You will be solicited to add an immense amount to the banking capital of the State, at the present session. Notices have been already published of intended applications for ninety-three new banks, with capitals, including the increase to those of the existing banks, to the amount of more than fifty-seven millions of dollars. It is said, and, I doubt not, generally believed, that the present banks are unable to afford the necessary accommodations which the increased and rapidly increasing commerce and business of the country demand. Before you undertake to supply this want of capital by legislation, you will doubtless satisfy yourselves of its actual extent, and investigate its real causes. If it shall be found, as I think it will, to arise, in a great measure, from a state of things that cannot probably long endure, and ought not to be upheld by you, so far, at least, you will be bound to withhold the proposed aid. There can be no mistake as to the fact, and it should not pass unnoticed, that an unregulated spirit of speculation has within the last year prevailed to an unprecedented extent. Our citizens, who have been influenced by this spirit, have not confined their operations to objects within our own State. They have made large investments in other sections of the Union. These operations have required something more than the use of our circulating credits. The amount of capital that has been thus transferred from this State to others, cannot be ascertained with any degree of accuracy, but it must be very great. These transactions, large as they have been, bear

no comparison to the enormous speculation in stocks, and in real property within our own State.

The vacant lands in and about several of our cities and villages, have risen, in many instances, several hundred per cent, and large quantities of them have been sold at prices which seem to me to have been produced more by the competition of speculation, than any real demand resulting from the increase of our population and actual prosperity. That the sudden rise in the price of these lands, is ascribed to the true cause, is evident from the conceded fact, that most of them have been purchased, not for the purpose of being occupied by the buyers, but to be again put in market, and sold at still higher prices. No estimate can be made of the amount of these transactions; but a conjecture may be formed as to the extent of the sales, from the fact that a single auctioneer in the city of New York sold real estate during the year ending on the 30th of September last, to the amount of more than twenty millions of dollars; and the character of these sales is indicated by the further fact that about eleven millions of this property was sold on the bid made by or for the owners. It is proper that I should remark, that the speculations in real property in this State, have not been confined to city and village lots, but have extended to farms and wild lands.

I presume it will not be denied that a very considerable portion of capital has been devoted to these speculations in land and stocks. I have deemed it necessary to allude to these transactions with a view to lay open the true causes of the alleged deficiency of capital to subserve the purposes of commerce, manufactures, and the other pursuits of the productive classes of our fellow citizens, deeming it very important that these causes should be well considered before you attempt to apply a remedy — particularly such a remedy as is asked for — an unexampled extension of our credit system.

It cannot, I think, be denied that a large amount of capital has been sent out of the state to subserve the purposes of foreign speculations. This is undoubtedly one cause of the want of sufficient capital to transact our ordinary business. It is not less true, I apprehend, that the existing banks have, to some extent at least, lessened their ability to accommodate persons employed in regular business pursuits, by affording assistance to those who are embarked in these speculations. This is another cause of the present want of banking facilities. But the main cause of this want, which now presses so severely on our fellow citizens, is less obvious, but not the less entitled to your consideration. The passion for speculation prevails to an extent heretofore unknown, not only among capitalists, but among merchants and traders. The funds of these capitalists have been withdrawn to some extent from situations in which they afforded accommodations to business men, and they have consequently been obliged to press upon the banks to supply this deficiency in their means. Merchants and others have abstracted from their business a portion of their capital, and devoted it to speculations in stocks and lands, and have then resorted to the banks for increased accommodations. To these causes I ascribe most of the embarrassment now felt for the want of sufficient bank facilities to conduct successfully our ordinary business concerns. The proposed remedy, judging from the applications, is to double the present number of banks, and nearly to treble the amount of banking capital. Before you apply this remedy, in whole or in part, you ought to be well satisfied that it will remove the difficulty, and that the use of it will not leave us in a worse condition than we are at present. If the passion for speculation has engrossed the pecuniary resources of the State to such an extent as to interfere with the strong claims that commerce and trade have upon them, is it not to be apprehended that it will appropriate to itself a large portion of any additional accommodations you may

provide for these and other branches of business? If I rightly apprehend its character, it will not be likely to abate while it can find means for its gratification. I am well aware that this spirit of speculation cannot be restrained by direct legislation; but you should be careful to avoid encouraging or sustaining it even incidentally by any measures you may deem it expedient to adopt for the purpose of repairing the injuries it has done to the business concerns of the State.

I do not doubt that the increase of commerce and manufactures among us has rendered more bank accommodations desirable, and that this cause has had very considerable influence in producing the numerous applications about to be presented to you; but I cannot give my assent to the proposition which the advocates for banks will urge as the rule for your action on this subject, that the increase of banks should be in proportion to the increase of business. This proposition assumes that whatever be the situation of the country as to the quantity of actual capital, the agency of banks is equally necessary, and the amount of accommodations required from them must be in proportion to its business transactions. It certainly cannot be true that a merchant or a manufacturer with a large capital, requires the same accommodations from banks as one doing an equal amount of business with little or no capital. What is true in relation to individuals, thus differently situated, must be true as to the whole community, at distinct periods, when circumstances have made a like difference in its condition. When banks were first established in this State and for some time thereafter, the amount of monied capital was small compared with the quantity of business that required the use of it. Banks were then chartered, not merely for performing the ordinary functions of such institutions — to furnish the public with a proper medium of circulation convertible into specie — safe places for deposits — facilities in transmitting funds from one place to another — and

to loan money — but to concentrate the floating capital at home, invite its introduction from abroad, and place it in a situation where it could be used more efficiently for the purposes of trade. Since that period we have had a long course of prosperity, our wealth has rapidly increased, and capital has flowed in upon us from other countries. I cannot, therefore, adopt the conclusion, that there is at this day the same disproportion between the amount of monied capital and the quantity of business, that existed when the policy of the banking system was first adopted, and for some time thereafter. This conclusion would, in my judgment, be somewhat derogatory to the capacity of our citizens for business, and present their condition as much less prosperous than it is confidently believed to be. But if unfortunately this conclusion be correct — if we have not in fact the amount of capital that our apparent condition implies — if our gigantic business concerns are principally sustained and carried on by a system of credit, and this system is wholly dependent for its stability upon our banking institutions, you will act on this subject under a fearful responsibility. A material error on your part would probably lead to results fatal to our general prosperity. All measures which you may adopt, affecting the currency or public credit, should regard particular interests so far only as they are subservient to the general good; they should be such as not merely to afford accommodations and facilities in prosperous times, but to secure confidence in our monied institutions in the most trying season of adversity, and enable them to withstand the rude shocks of pressure and panic. It is true, that our present institutions have been severely tried, and they sustained themselves in a most alarming crisis; but, if their number had been much larger than it was, and credit and circulation proportionably extended, it is by no means certain that such would have been the result.

We have had too much and too recent experience of the sensitiveness of public credit and public confidence in monied affairs, not to have learned many useful lessons on this subject, and it is the part of wisdom to profit by them. We know how many and what slight causes affect them. The credit which sustains our paper currency rests on the belief that the banks have the ability to redeem in specie their bills in circulation, whenever payments are demanded. On the other hand, the banks must have confidence in the borrowers to make prompt payment, or they will withhold their usual accommodations, and a derangement in business will be the necessary consequence. Their ability as debtors depends on their security as creditors. In times of prosperity, there is a mutual confidence; there will then be a demand for large accommodations, and banks will grant them to the full extent allowed by their charters. A change of times, or even what appears a capriciousness in public opinion, brings with it a mutual suspicion, and its concomitant evil, a pecuniary pressure. Over-trading at home and abroad; an unusual expansion of our credit system; over issues of paper currency; extravagant speculations, and extensive gambling in stocks — speedily followed by reactions; a derangement in our circulating medium; embarrassment in trade; and numerous bankruptcies, are the inevitable consequences. The impulse and accelerated movements given to our business in the first stages of this progress, are a very inadequate compensation for the many evils which attend its termination.

We do not want more banks to supply us with a paper currency, for we have enough of that already; more would not make it better, and might make it worse. It can scarcely be said we want an increase of them for places of deposit; for we have now all that are required for that purpose. New banks do not of themselves, in any case,

create capital; and under our present circumstances, they would not, as I apprehend, be the means of introducing any considerable amount of foreign capital. I therefore consider the multiplication of them to be a measure of very questionable policy, in regard to the general and permanent welfare of the State.

After a due consideration of the views I have now presented, and those in my former messages, as well as others that your own reflections will suggest, adverse to the multiplication of banks, and a large increase of banking capital, if you should come to the conclusion that these objections are outweighed or overruled by arguments of a different character, and that the public interest requires you to give your sanction to any of the numerous applications for new banks, or the increase of the capital of those now chartered, I indulge the hope that the number will be very small. I cannot believe that you will give heed to any of these applications, so far as they are supported only by the expected advantages to be conferred on individuals in the distribution of the stock, or by the accommodations they may afford to carry on new speculations, and sustain the factitious state of things resulting from past transactions of this character. Nor will you look, I presume, with much more favor on those applications which are urged, not so much on the ground of a want of facilities to conduct the present business, as on account of the agency it is assumed such institutions will have in creating new business.

These considerations being laid aside, if the actual demands of business — I mean only such business as banking facilities are most appropriately designed to subserve — shall prevail with you to extend these accommodations, you will, I trust, be careful to dispense them only to places where these demands are most imperious.

I perceive, among the numerous applications of this nature to be presented to you, several from the banks in the city of New York for an increase of their capital. In addition to the common and more general considerations which will apply with more or less force to all the applications for augmenting the amount of banking capital, a somewhat peculiar reason will be urged in favor of those emanating from these institutions. The branch of the United States Bank, in the city of New York, will cease its operations as a bank, on the fourth of March next, and there will be due to it eight or nine millions of dollars. If the payment of this large sum should be immediately exacted, it would undoubtedly produce very considerable embarrassment. The banks in New York are so extended that they will not be in a situation to afford such accommodations to the debtors of the Branch, as will counteract the effects of a sudden call on them for the payment of this large debt. If the evils which may ensue from this emergency are likely to be of such a character as to require any action from you to mitigate them, one, more suited to the circumstances of the case, would be preferable to the permanent increase of the capital of these institutions. If the Bank of the United States should be disposed to do with the Branch in the city of New York, what it has done in relation to most of its branches — transfer the debt; such banks as may unite together to purchase this debt, or such as should take any portion of it, might have their ability temporarily enlarged so as to enable them to do so, and gradually call it in, without withdrawing any considerable part of the accommodations which they now extend to their customers.

I am aware that a considerable increase of banking capital is contemplated by many as among the means of alleviating the distress resulting from the calamitous visitation which has recently befallen the city of New York. It is due, alike to the numerous sufferers upon whom this

visitation has fallen with severity, and to the citizens of the whole state, whose interests are more or less affected by it, that you should act promptly and efficiently in administering relief, and I do not doubt you will do it in the largest measure and most effectual way you can devise; but this is an event which I trust will produce only temporary embarrassments, and it should not therefore be permitted to change, in an essential manner, a general system of policy in relation to our currency. So far as I am made acquainted with the views of the inhabitants of that city, they mean to rely in this great and pressing emergency, mainly on their own resources,—resources which in themselves exceed those of almost any State in our confederacy. The real and personal property in the city of New York, according to the valuation of last year, exceeds two hundred and eighteen millions of dollars; it is more than double what it was in 1825, and more than two-thirds of the amount of the valuation of all the taxable property of the whole state, including that city ten years ago. This immense wealth must give the city of New York undoubted credit wherever and whenever she may choose to use it; yet if the objects to be attained by resorting to it in the present crisis, could be more effectually accomplished, or, in any respect, accelerated by adding to it the credit of the State, this should be done without hesitation. When the individual resources of a large number of our fellow citizens are impaired by a sudden devastation, or exposed to imminent peril by a strangely adverse course of events, to such a degree as to threaten injurious consequences to the general welfare, it is unquestionably the duty of the government to put in requisition the resources of the State to sustain them. The great losses, which have fallen on the insurance companies in that city, have suspended the operations of most of them, and new incorporations of this description will probably be wanted. The public interest requires that their capitals should be

large, their risks widely distributed, and their proceedings subjected to an occasional examination by persons to be selected by the Court of Chancery, or commissioners appointed by the Legislature.

The act passed at the last session of the Legislature, prohibiting the circulation of small bills, has begun to operate on the currency, and promises to produce all the beneficial results that were anticipated. This law was intended to effect a substitution of specie for the bills to be withdrawn from circulation. It was distinctly foreseen that, in the process of coming to this result, a public inconvenience would be felt before it could be completely effected, and that the specie required for this desirable purpose would be principally drawn from the banks. It was also foreseen that the banks would be curtailed in their profits, by being deprived of the privilege of furnishing the public with a medium of circulation composed almost entirely of their paper. If these effects had not been produced, the law would not have operated as it was expected; and yet these effects have, I believe, called forth some opposition to it. If the state of our currency required, as I am convinced it did, the application of such a measure to establish it on a firm basis, it is very unreasonable to complain of the inconvenience necessarily resulting from it. This inconvenience, so far as it is felt by the public, will soon pass away. The notion that the public will be subjected to a permanent embarrassment by the suppression of small bills, derives no support from reason or experience. The circulation of bank bills below the denomination of five dollars, has been, for a long time, prohibited in several of the States, and, as I believe, without any considerable inconvenience. There is no country in the world where such a circulation would be more desirable than in England, and none where more mature consideration has been given to its currency; and there it has been deemed wise to suppress the circulation of all bank paper below a note of five pounds, which

is more than twenty-two dollars of our currency. As I do not anticipate that any proposition to repeal or modify this law will be favorably received by you, I do not consider it my duty to enlarge upon its merits on this occasion.

As somewhat connected with the currency and the business transactions of the State, I deem it to be my imperative duty to invite your attention to a practice, which, carried to the excess it lately has been, is in my opinion, very pernicious to the well-being of the State. Dealing in stocks, so far as it assumes the character of stock-jobbing, is a species of gambling, and produces most of the evils, public and private, which usually result from the indulgence of that unfortunate propensity. If this kind of speculation has not been recently conducted in a manner altogether new, it certainly has been carried to an extent altogether unprecedented. Immense quantities of stock have been sold by those who had it not, under a contract to be fulfilled at some future period, and purchased by those who did not expect a delivery of it. The results of these transactions are adjusted without the delivery of the stock, and the loss and gain ascertained by its market value on the day stipulated for performing the contract. This is no more nor less than a wager upon the price of particular stocks on a specified future day. It is worse than wagers upon ordinary contingencies, because the event may be controlled by artifice and management, and the persons concerned are too strongly tempted to resort to them to subserve their interest. It is true, our present laws regard these transactions with disfavor. Such contracts are not only declared void, but the persons who have gained by them may be compelled to refund to the losing party or his representatives; yet they are constantly made, and in most instances faithfully executed. The extent to which this species of gambling has been lately carried, and its injurious effects upon many individuals who have embarked in it, have given it the character and con-

sequences of a public evil; and your official situation imposes on you, in my opinion, the duty to suppress it. I recommend to you to lay this practice under a strong legal interdiction — an interdiction that shall be rendered effective by pains and penalties.

I am informed, that in some instances, companies incorporated by the authority of other States, have established offices in the city of New York, at which deposits are received, and notes or bills discounted. This, in my opinion, is in contravention of the laws of this State. I invite your attention to the subject, and if there can be any reasonable doubt as to the adequacy of the existing laws to suppress this proceeding, I recommend that you should make such further provisions in relation to it as the case may require.

The law passed at the last session of the Legislature, relative to unclaimed dividends and deposits, operates unfavorably, it is believed, on the savings banks. The inconveniences and hazards to which the publications required by that law will expose these institutions, have induced some of them to defer a compliance with it until the subject could be again brought before the Legislature, with a view to procure some modification of that part of it which relates to them. I have received a communication from the trustees of the Bank for Savings in the city of New York, (which I herewith transmit to you,) showing what they apprehend would be the consequences to that institution, of making the publication required of them. The views therein presented, appear to be well worthy of your consideration; and I recommend a revision of this law, and such modification of it in relation to savings banks as will remove the injurious effects resulting from its present provisions.[8]

[8] In 1839, by chapter 347, the act of 1835, chapter 262, relating to unclaimed deposits, was modified so that savings banks were not required to report unclaimed deposits until the expiration of three years after any interest, dividends or deposits had been claimed or drawn out.

I regret that the constant violation of the law to suppress the sale of lottery tickets in this State, requires me again to remind the Legislature that it is a duty imposed on them by the Constitution to suppress this traffic.[d] The evils resulting from it, as well as the constitutional injunction, urge this subject upon your attention, and I hope some additional means will be devised to give complete efficiency to the existing law against this species of gambling.

The result of the enumeration of the people of this State, taken during the last year, will be soon presented to you by the Secretary of State. Although this result is not now accurately known, enough however is known to assure us that our population has greatly increased. The Constitution enjoins upon you, as a duty to be performed at this session, the reorganization of the senate districts, making them, in regard to the number of inhabitants contained in each, as nearly equal as may be.[e] You are also required, by the same authority, to apportion, at this session, the members of assembly among the several counties of the State, according to their population.[9]

The last legislature directed the Secretary of State to prepare and submit to you, a plan for the geological survey of this State. His report will be laid before you at an early day. I am persuaded that a careful geological examination of this State will not only open new sources of wealth, and accelerate the development of those already known to exist, but, by these means, will greatly augment the productive industry of our citizens. In several of the States, surveys of this description have been already made, and in others they are in progress. From the partial examinations which have been made of this State, there is

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[d] Const. 1821, art. 7, § 11.

[e] Const. 1821, art. 1, §§ 6, 7.

[9] A legislative apportionment was made by chapter 436, passed May 23, 1836.

reason to believe that it is at least equal to any other in the Union in the richness and variety of its resources.[10]

The development of these resources would be more or less beneficial to the various interests of the State, but it would be more directly advantageous to that interest which I doubt not you will feel a peculiar desire to advance — the interest of agriculture — by ascertaining the mineralogical composition of soils in different sections of our territory, and thereby causing such an improvement in the mode of cultivating them, as will best reward the labors of husbandry. In addition to further discoveries in relation to salt springs, beds of gypsum, and quarries of marble and stone fitted for architectural purposes, it may be ascertained by a critical and scientific examination, that the coal formations discovered in the neighboring districts of Pennsylvania, which have contributed so much to the wealth of that enterprising State, extend within our own boundaries. In the progress of these researches in a field greatly diversified in its geological character, and heretofore but imperfectly explored, science will doubtless receive acquisitions of no ordinary value. Under whatever aspect the subject is viewed, it deserves your attention; and I feel confident that such an undertaking would amply repay all the expense incurred in its execution.

The events of the past year, here and elsewhere, have continued to exhibit the importance of a well organized militia, both for the defence of public liberty and for the protection of private rights. During the recent disastrous

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10 By chapter 142, passed April 15, the Governor was authorized to appoint "a suitable number of competent persons, whose duty it shall be, under his direction, to make an accurate and complete geological survey of this State, which shall be accompanied with proper maps and diagrams, and furnish a full and scientific description of its rocks, soils, and minerals, and of its botanical and zoological productions, together with specimens of the same; which maps, diagrams and specimens shall be deposited in the State Library; and similar specimens shall be deposited in such of the literary institutions in this State as the Secretary of State shall direct."

fire in the city of New York, its patriotic militia voluntarily placed themselves under the civil authorities, and rendered, as on many former occasions, the most essential services to their fellow citizens.

A new edition of the act relating to the militia and public defence, including the amendments of the last session, has been published during the past year, and the principal part distributed, pursuant to the directions of the Legislature.

The provisions of the law passed at the last session, to secure a more faithful performance of duty, on the part of general officers and their staffs, have resulted, generally, in the beneficial consequences, which were anticipated. In several brigades, owing to this and other causes, an increased degree of discipline and military knowledge has been exhibited, and the most commendable exertions have been made, not without success, to maintain the respectability and efficiency of the present system. Experience, however, constantly admonishes us of the inutility, if not of the impracticability, of attempting to sustain, in a proper manner, an organization suited to the exigencies of the country nearly half a century ago. The great change that has since taken place in its external relations, and internal condition, has rendered the system then adopted unnecessarily burdensome. Satisfied of this fact, I have constantly indulged the hope that Congress would take measures to adapt the system to the present circumstances of the country. I have now the pleasure to state, that the President of the United States and the Secretary of War have recently presented such views to Congress on this subject, as warrant the belief that the desired modification will be effected at the present session of that body.

The annual report of the Adjutant General, which will shortly be laid before the Legislature, exhibits the present numerical force of the militia of this State, at one hundred and ninety-three thousand five hundred and seventy-two.

At the request of the President of the United States, I submit to you the proposition to cede to the general government the possessory right to so much of the land belonging to the State of New York upon Staten Island, and heretofore used for military purposes, as may be necessary to construct and maintain proper defences for the protection of the harbor of New York. I recommend that you should authorize the sale to the United States of so much as they may desire to possess for the proposed object, and cede to them such a concurrent jurisdiction over it, as is usually granted in like cases.[11]

Near the close of the last session of the Legislature, Heman J. Redfield was appointed a Canal Commissioner. After receiving the office, he resigned it, and I appointed John Bowman to fill the vacancy. This temporary appointment ceases at your present meeting. The important business before the Canal Commissioners and the Canal Board, requires that the vacancy should be immediately filled by you.[12]

Having concluded my remarks on the subjects in which our constituents have an immediate and exclusive interest, my sense of duty will not permit me to abstain from presenting to you, at this time, some considerations arising from our federal relations.

This State is a member of a community of Republics, subject in many things to one general government, and bound together by political ties that must not be sundered. This relation gives us rights essential to our well-being, and imposes on us duties equally essential to the well-being of our sister States. As we value the immense advantages that spring from this Union, so we should cultivate the

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11 Chapter 19, passed February 6, authorized the commissioners of the land office to sell to the general government such parts of Staten Island, previously used by the State for military purposes, as might be required "to construct and maintain proper defences for the protection of the harbor of New York."

12 John Bowman was chosen canal commissioner by the Legislature.

feelings and interests that give it strength, and abstain from all practices that tend to its dissolution. A few individuals in the middle and eastern States, acting on mistaken motives of moral and religious duty, or some less justifiable principle, and disregarding the obligations which they owe to their respective governments, have embarked in an enterprise for abolishing domestic slavery in the southern and southwestern States. Their proceedings have caused much mischief in those States, and have not been entirely harmless in their own. They have acquired too much importance, by the evils which have already resulted from them, and by the magnitude and number of those which are likely to follow if they are further persisted in, to justify me in passing them without notice. These proceedings have not only found no favor with a vast majority of our constituents, but they have been generally reprobated. The public indignation which they have awakened, has broken over the restraints of law, and led to dangerous tumults and commotions, which, I regret to say, were not in all instances suppressed without the interposition of the military power. If we consider the excitement which already exists among our fellow citizens on this subject, and their increasing repugnance to the abolition cause, we have great reason to fear that further efforts to sustain it will be attended, even in our own State, with still more dangerous disturbances of the public peace.

In our commercial metropolis, the abolitionists have established one of their principal magazines, from which they have sent their missiles of annoyance into the slaveholding States. The impression produced in those States, that this proceeding was encouraged by a portion of the business men of the city of New York, or at least was not sufficiently discountenanced by them, threatened injurious consequences to our commerce. A proposition was made for an extensive voluntary association in the South, to suspend business intercourse with our citizens. A regard for the

character of our State, for the public interest, for the preservation of peace among our citizens, as well as a due respect for the obligations created by our political institutions and relations, calls upon us to do what may be done, consistently with the great principles of civil liberty, to put an end to the evils which the abolitionists are bringing upon us and the whole country. With whatever disfavor we may view the institution of domestic slavery, we ought not to overlook the very formidable difficulties of abolishing it, or give countenance to any scheme for accomplishing this object, in violation of the solemn guarantees we are under not to interfere with this institution as it exists in other States.

Domestic slavery existed in almost every State when the Federal Union was formed. Its character was as well understood then as it is now. The men who founded the general government had as much philanthropy, and as just an appreciation of moral and religious duty, and knew as well what was due to the cause of human rights as the present generation; yet so great did they regard the difficulties of abolishing slavery, and so disastrous to the public welfare would be, as they apprehended, any intermeddling with it in the respective States, except by the citizens and civil authorities thereof, that they delegated to Congress no power to act on this subject, further than to prohibit the importation of slaves after the year 1807; but they recognized the right of the several States to continue slavery, without interference, by obliging them to deliver up to each other all fugitive slaves. They left the right to abolish slavery where only it could be safely left—with the respective States wherein slavery existed.

The State of New York had this right, and although the difficulties and dangers of exercising it, by reason of the small number of slaves in proportion to the whole population, were trivial compared with those which would attend the exercise of it in the southern States, where this number is proportionately large; yet slavery was not finally abol-

ished here until 1827. We were left to come to this result in our own time and manner, without any molestation or interference from any other States. I am very sure that any intermeddling with us in this matter, by the citizens of other States, would not have accelerated our measures, and might have proved mischievous. Such services, if they had been tendered, would have been rejected as useless, and regarded as an invasion of our rights.

If we view the labors of the abolitionists in the calm light of reason, undisturbed by any morbid sympathy and uninfluenced by the spirit of fanaticism — if we look at their object, connected as it must be with the means they are using to attain it — if we regard the utter improbability of their ever reaching the end by the use of these means, and the certain consequences which must result from pushing forward their efforts in the present direction, we must, I think, characterize their schemes as visionary and pernicious.

Their avowed object is to abolish slavery in the southern and southwestern States; and their means thus far have been confined to the organization of societies among us and to publications of various kinds on the subject of slavery, which are regarded throughout these States as libels on their citizens, and provocatives to insurrection among their slaves. So far as their proceedings are designed to operate upon this State, we may inquire what end or object they have in view. It cannot be to abolish slavery here, for it does not exist among us. Is it to convince the people of this State that slavery is an evil? Such is now the universal sentiment, and no man can be found among us who entertains a thought of returning to our former condition in this respect. If the abolitionists design to enlist our passions in their cause, such a course would be worse than useless, unless it had reference to some subsequent action. If it is expected in this manner to influence the action of Congress, then they are aiming at an usurpation of power.

Legislation by Congress would be a violation of the Constitution by which that body exists, and to support which every member of it is bound by the solemn sanction of an oath. The powers of Congress cannot be enlarged so as to bring the subject of slavery within its cognizance, without the consent of the slaveholding States.[f] The proceedings of the abolitionists have rendered their object in this respect absolutely unattainable. They have already excited such a feeling in all those States, that a proposition so to enlarge the powers of Congress, would be instantly rejected by each with indignation. If their operations here are to inflame the fanatical zeal of emissaries, and instigate them to go on missions to the slaveholding States, there to distribute abolition publications and promulgate abolition doctrines, their success in this enterprise is foretold by the fate of the deluded men who have preceded them. The moment they pass the borders of those States, and begin their labors, they violate the laws of the jurisdiction they have invaded, and incur the penalty of death or other ignominious punishment. I can conceive no other object that the abolitionists can have in view, so far as they propose to operate here, but to embark the people of this State, under the sanction of the civil authority, or with its connivance, in a crusade against the slaveholding States, for the purpose of forcing abolition upon them by violence and bloodshed. If such a mad project as this could be contemplated for a single moment as a possible thing, every one must see that the first step towards its accomplishment, would be the end of our confederacy, and the beginning of a civil war.

So far, therefore, as it respects the people of this State, or any action that can emanate from them, I can discover no one good that has resulted, or can be reasonably expected to result, from the proceedings of the abolitionists; but the

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[f] U. S. Const. art. 4, § 2, clause 3; art. 5; 5th Am.; see also 13th Am.

train of evils which must necessarily attend their onward movements, is in number and magnitude most appalling.

Those devastations which in the course of providence are sometimes permitted to visit populous and opulent cities, suddenly prostrating the monuments of art and sweeping away the vast accumulations of years of patient and well directed industry — great and severe as we now feel them to be — are small indeed compared with the ruin and desolation which would attend the subversion of our federal government, and the progress of a civil and servile war, spreading its ravages through half the States of this confederacy. Such are the fatal issues to which, in the judgment of our southern brethern, the abolition efforts tend, and the recent indications of insurrectionary movements among the colored population of the slave-holding states, show that these fears are not entirely imaginary.

As all the schemes of the abolitionists are professedly prosecuted with particular reference to results to be produced in the slave-holding States, it is proper that we should inquire into the manner in which they design to bring about these results. Is it expected to operate on the slave population, and by their own immediate agency to effect their emancipation? This can only be done by violence. The very first act in this scheme of abolition, which is carried on under the guise of religion, morality and love for mankind, would open with insurrection, massacre and a servile war in which, if the slaves triumph, their masters must be the victims. Throughout those States, such is generally believed to be the deliberate design of the abolitionists. That their measures tend to such disastrous results, cannot, I think, be denied; but that the authors of them clearly foresee these results, and recklessly push on to them willing to participate in such crimes, and to meet the fearful responsibility they would incur, I am not prepared to believe. So far as reason prevails among these deluded men, they will undoubtedly deny that this mode of effecting their

object is embraced within their plan of operation. It is more charitable to presume that they mean to stop short of this bloody catastrophe; that they are willing to spread dire alarm among the white population of those States, with a view to make them feel that life, property and all human comforts are insecure where domestic slavery prevails, and by these means so to aggravate its evils that they will be led by the mere pressure of them to emancipate their slaves. Such a mode of attempting to effect this object, is characterized alike by folly and wickedness. To suppose that such means will conduce to such an end, betrays a lamentable ignorance of the universal laws of human action. If the slave owners ever concur in any plan for the abolition of slavery, it must arise from a better motive than fear. They will secure themselves from danger by acting on the objects from which it is apprehended —not by emancipation, but by multiplying safeguards, by increasing restraints, by preventing intercourse as far as practicable among the slave population, by withholding from them all moral and religious instruction, and by every conceivable means of making them harmless machines. To satisfy ourselves that such will be the consequences of exciting alarms, we have only to look at what they have already done and are preparing to do. Manumission is discouraged, and measures are about to be adopted to expel all free persons of color from the slave-holding states. Instead of an increasing disposition to co-operate in any plan of emancipation, there is now exhibited a more fixed determination than heretofore to maintain the institution of slavery.

The great engine which the abolitionists profess to wield, and by the operations of which they hope to bring their object within their reach, is free discussion. By the potency of abolition arguments, the slaveholders are to be instructed in their duty; to be taught lessons of humanity, of moral obligation and civil liberty; and to be induced to

strip the bonds from their slaves, and receive them into social and political fellowship. After all that has been done to accomplish this end, it may not be unprofitable to look at the results. If we believe the concurring testimony of the citizens of the slaveholding States, not one convert has been made among them: on the contrary, their passions are aroused; a deep sense of indignation at unprovoked wrongs and a mischievous intermeddling with their domestic concerns, excites and agitates the entire mass of the white population. The abolitionists, and all their works, are loudly and universally denounced as seditious, incendiary and wicked; and the bonds of amity and concord which unite us to the people of the South, are threatened with severance because we tolerate within our borders these disturbers of their peace and violators of their laws. Such, we are assured, is the progress which the arguments of the abolitionists have made in bringing the slaveholders to a concurrence in their views.

When we consider the matter and manner of these appeals, and the character of the people to whom they are made, we ought not to be surprised that they have been indignantly rejected. In all that regards the civilities of life, in high intellectual cultivation and endowments, in moral conduct and character, in comprehension of the principles of civil and political liberty, in ability to give these principles a practical application, in love of country and devotion to its best interests, the people of the South have furnished as many eminent examples as any other section of the Union. When an attempt from any quarter, or under any pretence, is made to disparage them, if we forebore to vindicate their character, we might seem to be unmindful of what is due to them for the distinguished part they have acted in all the trials and conflicts through which our country has passed, from the earliest stages of the Revolution down to the present time. In all the views I have been able to take of the labors of the abolitionists, I have not dis-

covered that they have produced a single benefit; but every step in their movements, thus far, has been attended with evil consequences. I will not undertake to describe the calamities which, in all probability, would result from their further progress, not only to the people of the several States, but to the whole human race, so far as the cause of civil liberty is concerned, because I indulge the hope that they have already reached the last stage of their onward career. I willingly turn from this view of the subject, to direct your attention to what has been done, and what may be required, to prevent further evils from this cause.

The people of this State continue to cherish an unabated attachment to the federal compact. The many signal advantages they have derived from it, and the many they still look for, bind them to a course of fraternal conduct towards their sister States, and lay them under the highest and most sacred obligations to fulfill in good faith, and to the utmost extent of its requirements, all the duties it imposes on them, and to abstain from all practices incompatible with these duties, or contrary to the spirit of any of its provisions.

Acting upon these principles, our fellow-citizens very generally feel it to be their solemn duty, whatever they may think of slavery in the abstract, or in its actual condition in any section of the Union, to leave its treatment, as it was left in their case, entirely and forever to the people of the States in which it exists. These States are not only entitled to the exclusive control of the subject, but, as they are immediately affected by it, they, and they only, best understand the proper mode of treating it; and it requires but a small share of good feeling towards them, and of diffidence in ourselves, to satisfy us that the matter may be safely left to the wisdom and humanity of those to whom it exclusively belongs.

If this state could be brought to think that the advantages it derives from the federal constitution, are not a sufficient compensation for the restraints imposed by that

instrument; if, for the sake of displaying a morbid and fanatical spirit of false philanthropy, even at the risk of encountering the danger and incurring the responsibility of an attempt to reform the institutions of other States, it should be willing to give up these advantages, honor and duty would require it, before entering on such an experiment, to call upon the other States to release it from the solemn engagements it contracted in becoming a member of the Union; but so long as the people of this State cling to the advantages which this compact secures to them; so long as they profess to regard it as the source of their highest earthly good, and the object of their most cherished aspirations, they will, I trust, ever regard it as due alike to duty, to consistency, and to honor, to fulfill in its spirit every injunction it imposes, and to respect and observe with the utmost fidelity, all the great principles on which it is founded.

Under the influence of the foregoing considerations, and others of a kindred nature, our constituents have expressed their enlightened and deliberate judgment upon the subject under consideration. With an earnestness and unanimity never before witnessed among us, they have, without distinction of sect or party, in their primary assemblies, and in various other ways, expressed their attachment to the constitution of the federal government; their determination to maintain its guarantees; their disapprobation of the whole system of operations set on foot by the abolitionists; their affection for their brethren of the South; and their fixed purpose to do all that in them lies, consistently with law and justice, to render these sentiments effectual. It is not to be believed that these manifestations of public sentiment have been or will be disregarded by those who have engaged in, or given countenance to the abolition proceedings.

I am fully persuaded that the powerful energies of public opinion, as it has been called forth throughout the whole

state, have already produced most salutary effects, in disabusing many persons who had inconsiderately concurred in the visionary schemes of the abolitionists.

When the very small number that still adhere to this cause, see that the immense majority of the people of this state, including certainly a proportionate amount of intelligence and worth, and embracing men of all sects in religion, and of all parties in politics, are utterly and irreconcilably opposed to them; and that their measures are regarded with the deepest repugnance by all who affectionately cherish the Union and harmony of the States; including among them philanthropists at least as enlightened and sincere as any of themselves; they will, it is confidently hoped, be induced to pause in their career, and to sacrifice on the altar of their common country, the opinions and motives which have hitherto prompted them to exertions regarded with so much abhorrence by so great a majority of their fellow citizens.

When, to the just influence which may reasonably be anticipated from the sentiments of the people, so unitedly and powerfully expressed, and rendered still more efficacious, as I think they might and should be, by the opinions and views of their assembled representatives, is added to the overwhelming weight of the arguments addressed to the reason and the consciences of those who yet adhere to the abolition cause, it would be imputing to them a deplorable degree of mental blindness and fanatical delusion, not to expect a general abandonment of their wild schemes. All but those who are confirmed in fanaticism or reckless of consequences, it is believed, will be constrained by the decided and constantly increasing force of public opinion, to give up their dangerous attempts to act on the institutions of other States. Those who may not be thus reclaimed or controlled, will be too few in number and in influence, I am persuaded, to excite apprehension.

Relying on the influence of a sound and enlightened public opinion to restrain and control the misconduct of the citizens of a free government, especially when directed, as it has been in this case, with unexampled energy and unanimity to the particular evils under consideration, and perceiving that its operations have been thus far salutary, I entertain the best hopes that this remedy, of itself, will entirely remove these evils, or render them comparatively harmless. But if these reasonable expectations should unhappily, be disappointed; if, in the fact of numerous and striking exhibitions of public reprobation, elicited from our constituents by a just fear of the fatal issues in which the uncurbed efforts of the abolitionists may ultimately end, any considerable portion of these misguided men shall persist in pushing them forward to disastrous consequences, then a question, new to our confederacy will necessarily arise, and must be met. It must then be determined how far the several States can provide, within the proper exercise of their constitutional powers, and how far in fulfillment of the obligations resulting from their federal relations, they ought to provide, by their own laws, for the trial and punishment by their own judicatories, of residents within their limits, guilty of acts therein, which are calculated and intended to excite insurrection and rebellion in a sister state. Without the power to pass such laws, the States would not possess all the necessary means for preserving their external relations of peace among themselves, and would be without the ability to fulfill in all instances, the sacred obligations which they owe to each other as members of the Federal Union. Such a power is the acknowledged attribute of sovereignty, and the exercise of it is often necessary to prevent the embroiling of neighboring nations. The general government is at this time exercising that power to suppress such acts of the citizens of the United States, done within its jurisdiction, in relation to the belligerent authorities of Mexico and Texas, as are inconsistent with the

relations of peace and amity we sustain towards those States. Such a power, therefore, belonged to the sovereignty of each of the States, before the formation of the Union, and as far as regards their relation to each other, it was not delegated to the general government.[g] It still remains unimpaired, and the obligations to exercise it have acquired additional force from the nature and objects of the federal compact. I cannot doubt that the Legislature possesses the power to pass such penal laws as will have the effect of preventing the citizens of this State and residents within it, from availing themselves, with impunity, of the protection of its sovereignty and laws, while they are actually employed in exciting insurrection and sedition in a sister State, or engaged in treasonable enterprises, intended to be executed therein.[13]

I have recently received from the Governor of the State of South Carolina, a copy of a report and resolutions, in relation to the proceedings of the abolitionists, adopted by the Legislature of that State; and I herewith transmit them to you, in compliance with the request therein contained.[14]

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g U. S. Const. 10th Am.

13 The Legislature acted on Governor Marcy's suggestion relative to the abolition movement, and adopted the following resolutions:

"*Resolved* unanimously, That the views and sentiments contained in the late annual message of the governor of this State, recognizing the constitutional right of the several states of the union, to regulate and control within their own limits, the relations of master and slave, and to continue or abolish the same as the governments of those states may respectively deem consistent with their duty, safety and welfare, meet the full and cordial concurrence of this legislature.

Resolved, That the people of this State, by responding with unexampled unanimity, to those views and sentiments, and manifesting their determination to abstain from, and to discountenance those political agitations and public discussions of the subject of domestic slavery, which were calculated to produce an exciting, an improper and pernicious influence within the limits of other states, have given to the Union stronger guarantees than law could furnish, and rendered present legislation upon the subject by their representatives unnecessary and inexpedient."

14 The following are the South Carolina resolutions:

"*Resolved*, That the formation of the abolition societies, and the acts and doings of certain fanatics, calling themselves abolitionists, in the non-slaveholding States of this confederacy, are in direct violation of the obligations of the compact of union, dissocial, and incendiary in the extreme.

I have also received from the Governor of Alabama, a requisition to deliver up to that State, a person residing in the State of New York, charged with the crime of distributing and publishing in the State of Alabama, a seditious paper designing and intending to incite the slave population of that State to insurrection and rebellion. The accused was not an actual fugitive from justice, and it did not appear that he had any other participation in the alleged crime than what arose from acts done within this State. I was, therefore, convinced that neither the constitution or laws of the United States, nor of this State, im-

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Resolved, That no State having a just regard for her own peace and security, can acquiesce in a state of things by which such conspiracies are engendered within the limits of a friendly State, united to her by the bounds of a common league of political association, without either surrendering or compromiting her most essential rights.

Resolved, That the Legislature of South Carolina, having every confidence in the justice and friendship of the non-slave holding States, announces to her co-states her confident expectation, and she earnestly requests that the governments of these States will promptly and effectually suppress all those associations within their respective limits, purporting to be abolition societies, and that they will make it highly penal to print, publish and distribute newspapers, pamphlets, tracts and pictorial representations, calculated and having an obvious tendency to excite the slaves of the Southern States to insurrection and revolt.

That, regarding the domestic slavery of the Southern States as a subject exclusively within the control of each of the said States, we shall consider every interference, by any other State or the General Government, as a direct and unlawful interference, to be resisted at once, and under every possible circumstance.

In order that a salutary negative may be put on the mischievous and unfounded assumption of some of the abolitionists — the non-slave holding States are requested to disclaim by legislative declaration, all right, either on the part of themselves or the government of the United States, to interfere in any manner with domestic slavery, either in the States, or in the territories where it exists.

That we should consider the abolition of slavery in the District of Columbia, as a violation of the rights of the citizens of that district, derived from the implied conditions on which that territory was ceded to the General Government, and as an usurpation to be at once resisted as nothing more than the commencement of a scheme of much more extensive and flagrant injustice.

That the Legislature of South Carolina, regards with decided approbation, the measures of security adopted by the Post Office Department of the United States in relation to the transmission of incendiary tracts. But if this highly essential and protective policy, be counteracted by Congress, and the United States mail becomes a vehicle for the transmission of the mischievous documents, with which it was recently freighted, we, in this contingency, expect that the Chief Magistrate of our State, will forthwith call the Legislature together, that timely measures may be taken to prevent its traversing our territory."

posed on me the duty, or conferred the right, to surrender him, and I declined to do so.[h] A difference of opinion between the chief executive officers of the two states, in relation to an official obligation, due to one from the other, is much to be regretted; and the friendly relations subsisting between them render it proper that I should communicate the fact to you, together with the views of the Governor of Alabama, in support of the claim he has made on behalf of that State. I herewith transmit the documents and correspondence relative to this case.[15]

In discharging the various and responsible duties, devolved on you as legislative guardians of this State, I shall give you my cheerful co-operation, in the confident hope that your labors will subserve the best interests and advance the general welfare of our constituents.

W. L. MARCY.

Albany, January 5, 1836.

SPECIAL MESSAGES.

January 6. To the Legislature:

"GENTLEMEN.— The situation of that portion of our constituents who have been directly affected by the recent destructive fire in the city of New York, requires your immediate attention. Unless your aid is promptly interposed, the consequences of this disaster will soon become more severe and extensive. The citizens of New York, appointed a committee to confer with me in relation to the relief to be afforded by the State in this great emergency. Their views on this subject are presented in a communication addressed to me, which I herewith transmit to you, with a request that it should receive your early attention. Several projects for relief accompanied the communication of the committee, and I have deemed it proper to transmit

[h] U. S. Const. art. 4, § 2, clause 2.

[15] See *post*, p. 594, for a note on the extradition of Robert G. Williams.

them also along with it, that you may be apprised of the various modes of giving relief which have been suggested.

It is of the first importance that the claims on the insurance companies for losses should be speedily adjusted. Many of the merchants who have these claims, depend principally upon the payment of them for the means of again commencing business, and they are exceedingly anxious to have them settled as soon as practicable. The memorial from the common council and citizens of New York on this subject, will require your immediate consideration. It appears by the accompanying statement of the committee, that about one half of the insurance companies have become insolvent in consequence of their heavy losses, and that most of those that are not so, are, from the same cause, very much embarrassed.

A very large amount of property in New York usually kept under insurance, is now in effect without it, in consequence of the failure and embarrassment in these institutions, and the owners at this time feel a peculiar uneasiness on this account. It is proper that you should give them the means of effecting safe insurances without obliging them to go abroad for that purpose. Your attention ought therefore to be particularly directed to this object. Where it is practicable to reorganize the old companies, it seems to me to be advisable to do so; and if new companies should be required, I see no objections to granting charters for them; but in resuscitating the old, and in creating new companies, you ought to confer only the rights and powers appropriate to the business of insurance, and carefully restrain them from using any other.

The corporation of the city of New York, it is understood, will apply to you for authority to raise six millions of dollars, to be used principally in purchasing, or advancing money on the bonds which have been taken by the insurance companies on the investment of their capitals.

I cannot anticipate any objection to this measure, and I hope there will be no delay in acting on it.

The immense destruction of property by the fire may render further measures of relief necessary. There appears to be a considerable diversity of opinion as to what should be the nature and character of them. Such measures should have reference to the peculiar circumstances of the case. The embarrassment caused by the disaster will only be temporary, and the measures of relief should therefore be of a similar character. In addition to the measures already mentioned, it is generally suggested that an increase of capital or of bank accommodations, will be necessary to enable the commercial community to sustain, in a proper manner, the pressure caused by their heavy losses.

The banks in the city of New York have now about one million of the surplus moneys belonging to the Canal Fund. The Commissioners of that fund are authorized to borrow eight hundred and sixty thousand dollars for the completion of the Chenango canal. No considerable part of this sum will be wanted until after some part of the tolls of next year shall have been received. If the Commissioners should immediately issue the stock for this loan, they would be enabled, by this means and by using some other stock under their control, to place in the banks of New York, including the sum now loaned to them, two millions of dollars without producing any inconvenience to the pecuniary affairs of the other parts of the State. The accruing tolls of the Erie and Champlain canals can be applied to finish the Chenango canal, and the portion of the two millions belonging to this canal, can, at the same time be transferred to the Erie and Champlain Canal fund, and thus the whole two millions become a part of the surplus revenue of that fund. The debt for the payment of which this surplus is pledged, will not be due till 1837 and

1845. The whole of the two millions can therefore be loaned to the banks in the city of New York until July, 1837, and if necessary, the principal part of it continued until July, 1845. To give greater efficiency to this sum in affording relief, it might be distributed among the Safety Fund banks in that city, with authority to each of them to regard the portion it may receive as so much increase of capital, and to discount on it as such for the time they may retain the loan, or for such a period as you may think proper to designate. This arrangement would give these banks the privilege to extend their accommodations five millions beyond the amount they are now authorized to discount. Although these banks might not be able to avail themselves of this privilege to the full extent, they could undoubtedly increase their accommodations three or four millions.

If this and the other measures should not be adequate to the exigencies of the crisis, the abilities of these banks might be still further enlarged under proper limitations, as to amount and time, in case they should become the borrowers for any specified time less than a year, of any portion of the moneys which the city may raise under the authority proposed to be given to it, or if they should procure funds for a similar period from any foreign source.

In these or any other measures suitable to the case, and calculated to give speedy and effectual relief to our fellow-citizens of New York, I shall give you my cordial co-operation. [See note 1.]

W. L. MARCY."

Albany, 6th January, 1836.

January 6. To the Assembly: Transmitting the annual report of the Commissary General.

January 6. To the Assembly: Transmitting a long preamble with accompanying resolutions adopted by the

Legislature of North Carolina relative to incendiary publications. The following are the resolutions:

"*Resolved,* That North Carolina alone has the right to legislate over the slaves in her territory, and any attempt to change their condition, whether made by Congress, the legislatures, or the people of other States, will be regarded as an invasion of our just rights.

Resolved, That we are ready and willing to make, on this subject, a common cause with the rest of our sister slave-holding States, and hereby invite their co-operation in passing such laws and regulations as may be necessary to suppress and prevent the circulation of any incendiary publications within any of the slave-holding States.

Resolved, That the thanks of this State are due to, and the kindest feelings of the citizens thereof are cherished towards their brethren of the North, who have magnanimously sustained the principles of our Federal Government, and recognized and maintained our rights against the fanatics of those States.

Resolved, That our sister States are respectfully requested to enact penal laws prohibiting the printing within their respective limits, all such publications as may have a tendency to make our slaves discontented with their present condition, or incite them to insurrection.

Resolved, That although by the Constitution all legislative power over the District of Columbia is vested in the Congress of the United States,[1] yet we would deprecate any legislative action on the part of that body towards liberating the slaves of that District, as a breach of faith towards those States by whom the territory was originally ceded, and will regard such interference as the first step towards a general emancipation of the slaves of the South."

January 27. To the Assembly: Transmitting resolutions adopted by the Legislature of Georgia, relative to the abolition movement in the northern States.

February 15. To the Assembly: Transmitting resolutions adopted by the Legislature of Alabama, relative to

[1] U. S. Const. art. 1, § 8, clause 17.

the abolition of slavery. The resolutions were similar to the foregoing North Carolina resolutions.

February 15. To the Assembly: Transmitting resolutions adopted by the Legislature of Virginia relative to the abolition movement.

March 18. To the Assembly: Transmitting a resolution adopted by the Legislature of Ohio, proposing an amendment to the federal constitution prohibiting the election of president by the House of Representatives, or a vice-president by the Senate, so that the election can in no case be taken from the people.

March 19. To the Senate: Transmitting the following resolutions adopted by the Legislature of Michigan relative to the movement for the abolition of slavery:

"*Resolved by the Senate and House of Representatives of the State of Michigan,* That regarding domestic slavery of the southern States, as a subject exclusively within the control of said States, every interference with the subject by the General Government or any other States is an assumption of power not delegated by the Federal Constitution.

Resolved, That the freedom of the press, and the freedom of speech, are sacred and inviolable rights guaranteed to the people; but that in proportion to their sacredness and value, is the obligation to preserve them from abuse.[1]

Resolved, That the formation of societies, and the acts and proceedings of individuals in the non-slaveholding States, having for their object an interference in the rights of the slaveholder, are in direct violation of the obligations of the compact of our Union, and destructive to the tranquillity and welfare of the country."

March 21. To the Senate: Transmitting resolutions adopted by the Legislature of Kentucky relative to the abolition movement, and which were similar in character to those adopted by North Carolina.

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[1] U. S. Const. 1st Am.

March 29. To the Senate:

"I herewith transmit to you resolutions passed by the Legislature of Pennsylvania, relative to the distribution of the proceeds from the sales of the public lands, and for other purposes.

W. L. MARCY."

Albany, March 26, 1836.

The legislative records do not contain the document.

March 30. To the Assembly: Transmitting resolutions adopted by the Legislature of Mississippi urging the authorities and inhabitants of nonslaveholding states to adopt measures to repress anti-slavery agitation, discussion and publications.

April 5. To the Senate: Transmitting the following resolutions adopted by the Legislature of Maine in relation to the abolition movement:

"*Resolved*, That the United States government is a government of enumerated, limited and defined powers, all which are set forth in the Constitution; and that all powers not granted in that instrument are reserved to the States or to the people.*

Resolved, That the power of regulating slavery within the confines of a State was not granted, and therefore does not exist in the general government.

Resolved, That excepting so far as they are united for certain and defined purposes, the States forming the confederacy of the United States, are, with respect to each other, distinct and sovereign States, each having a separate and independent government, the action of which, under the limitations of the Constitution of the United States, and within the confines of the State, is not to be questioned by any power save the people of that State; and that any interference by a State, or by the inhabitants of a State, with the domestic concerns of another State, tends to break up the compromises, and disturb the harmony of the

* U. S. Const. 10th Am.

Union, and should be discountenanced by every good citizen.

Resolved, That in Maine the discussion of the question of the abolition of slavery having been arrested by the decided expression of public disapprobation, and no abolition paper being printed within the borders of the State, legislation on the subject is inexpedient."

April 7. To the Senate: Transmitting resolutions adopted by the Legislature of Ohio relative to the abolition movement, and which were similar in character to the foregoing Michigan resolutions. [See Senate Document, No. 87.]

April 18. To the Assembly: Transmitting a resolution adopted by the Legislature of Maine similar to the foregoing Ohio resolutions relative to the election of President and Vice-President.

May 21. To the Assembly: Amos Eaton having presented to the Legislature a petition for relief which was considered by a committee of the Assembly, that Committee asked to be discharged from further consideration of the matter, and that it be referred to the Governor, who responded by the following message:

"The resolution referring to me the accompanying memorial of Amos Eaton, does not specify the precise object of the reference. I have no particular information which will enable your body to determine the claims of the petitioner upon the justice or equity of the State. I believe he has, in years past, spent considerable time in a geological examination of some parts of this State. This examination has been carried on and patronized, to a considerable extent, by a munificent individual, the Hon. Stephen Van Rensselaer. If it is the object of the petitioner to be remunerated for the aid which his past labors will afford to the contemplated geological survey of the State under the recent law passed for that purpose, I think it will not be practicable at this time, to make any estimate of the value of these labors, as connected with

this object. As to any compensation to be allowed him, independently of this connection, I have nothing to communicate which will essentially assist the Legislature in coming to a right conclusion on the subject.

W. L. MARCY."

Albany, May 21, 1836.

May 21. To the Assembly:

Veto of a bill entitled "An act to authorize and require railroad companies to convey the United States mail."

"I herewith return to you the bill entitled 'An act to authorize and require railroad companies to convey the United States mail,' not upon the ground that I have any objection to its provisions, but because it has not, in my opinion, passed the two branches of the Legislature by a constitutional vote. It appears to have been regarded by them as a majority bill. If there be any among the numerous railroad companies incorporated by the Legislature, that are not authorized to convey the United States mail, this bill proposes to enlarge their powers; and if it becomes a law, would be an alteration of their charters. This cannot be effected without a vote of two thirds of the members elected to each branch of the Legislature.[k] It also alters those charters in which there is no provision on the subject of conveying the mails. These companies have now an unrestricted right to exact such terms as they think proper in relation to this subject; but if this bill should become a valid law, this right would be taken away from them. Such a restriction of their present powers is an important alteration of their charters. If the Legislature can by itself, or by the agency of commissioners appointed under its authority, regulate the terms on which these companies shall perform this particular service for

[k] Const. 1821, art. 7, § 9.

the United States, it can in like manner, by a law passed in the same mode, regulate the services to be performed by them for individuals. This bill proposes to affect their rights in a very essential manner, and by a direct application of legislative power to the privileges which have been given to them in their charters.

In my opinion it cannot be considered as having been passed by the Legislature, until two-thirds of the members elected to each branch thereof, have voted in favor of it. For this reason, and this only, I have deemed it my duty to withhold from it my approval."

The bill was not passed over the veto.

May 26. To the Senate:

Veto of a bill entitled "An act to authorize the medical faculty of Geneva College to appoint a delegate to the State Medical Society."

" The bill entitled 'An act to amend title seventh, chapter fourteenth, of the first part of the Revised Statutes,' was sent to me this day from the house of Assembly, and I have approved the same. The third section of that law confers on the Medical Faculty of Geneva College precisely the same powers and privileges proposed to be conferred on them by the bill to authorize the Medical Faculty of Geneva College to appoint a delegate to the State Medical Society; it is therefore, in my opinion, entirely useless for the said bill to become a law. With this objection I return it to the Senate, wherein it originated."

The bill was not passed over the veto.

May 26. The Legislature adjourned without day.

EXTRADITION OF ROBERT G. WILLIAMS.

Robert G. Williams, a citizen of New York, had been indicted in Alabama for circulating an alleged seditious publication in that State. This publication was connected with the agitation relative to the abolition of slavery. Governor John Gayle of Alabama demanded of Governor Marcy the surrender of Williams for trial and punishment in Alabama. Governor Marcy declined for the reason briefly stated in his message (*ante*, p. 584), namely, that Williams had not been in Alabama, and could therefore not be deemed a fugitive from justice. Governor Gayle admitted the fact, but claimed that the word "flee" in the constitution should be deemed equivalent to "evade," and that therefore Williams was a legitimate subject of demand and surrender under the provisions of the Constitution and laws relating to fugitives from justice.[1]

The New York legislative records for 1836, including the Senate and Assembly journals and Senate Document No. 1, and Assembly Document No. 2, contain the interesting correspondence between Governor Gayle and Governor Marcy on this subject, including the requisition, indictment, letters which passed between the Governors and an extract from the message by Governor Gayle to the General Assembly of Alabama in which he argues at some length the right of that State under the circumstances to demand the surrender of Williams. In this message the Governor makes the following quotation from Vattel:

"A sovereign ought not to suffer his subjects to molest the subjects of others, or to do them an injury; much less should he permit them audaciously to offend foreign powers. He ought to oblige the guilty to repair the damage, if that be possible — to inflict upon him exemplary punishment, or in short, according to the nature and cir-

[1] U. S. Const. art. 4, § 2, clause 2.

cumstances attending it, to deliver him up to the offended State, there to receive justice."

But he thought this rule was defective, for the reason that the State on which a demand was made might be the judge as to the sufficiency of the circumstances which would warrant it in punishing one of it own citizens for a violation of the rights of another State.

Continuing Governor Gayle said:

"This provision of the constitution should receive the most liberal construction, for the reason that it is in favor of the rights of the States, and because, without such construction, they will be deprived of the power of self protection. It is undoubtedly true that the States of the Union, in all their reserved rights occupy to each other the relation of independent sovereignties, and any one of them has the right to demand redress and satisfaction for injuries done by the others or by their citizens."

The following is Governor Marcy's reply to Governor Gayle's demand for the surrender of Williams:

STATE OF NEW YORK,

EXECUTIVE DEPARTMENT,

ALBANY, *8th Dec.*, 1835.

SIR.— The requisition made on me by your Excellency for the arrest and delivery of Robert G. Williams, has been received, together with the documents and papers therewith transmitted; and I have given to the application the careful and mature consideration due to it on account of the high source from which it has emanated, and the very grave question which it presents for my determination. The crime imputed to Williams, is, "the wickedly and maliciously causing to be distributed and published a seditious paper in this State, [the State of Alabama,] maliciously

designing and intending to incite the slave population thereof to insurrection and rebellion against their masters;" and it is alleged in the requisition that he "has fled from justice, and is now going at large in the State of New York."

The indictment charges Williams with having committed a crime in the county of Tuscaloosa, which is within the territorial limits of the State of Alabama; but in your letter to me, transmitted with the requisition, "it is admitted the offender was not in the State [of Alabama] when his crime was committed, and that he has not *fled* therefrom according to the strict literal import of that term." For anything that appears to the contrary, and so I presume the fact to be, Williams, at the time he committed the offence, was and still is a citizen of the State of New York, subject to its laws, and entitled to the rights that belong alike to all its citizens.

The right on your part to demand him, and the duty on my part to deliver him up, if they exist, are given and imposed by that clause in the Constitution of the United States, which declares that "a person charged in any State with treason, felony or other crime, who shall *flee* from justice, and be found in another State, shall, on demand of the executive authority of the State from which he *fled* be delivered up, to be removed to the State having jurisdiction of the crime."[m] Although it is conceded that Williams is not literally a fugitive from the State of Alabama, and nothing appears to show that he has ever been within its territory, yet, according to your construction of the clause of the Constitution above quoted, it is my duty to cause him to be delivered up on your requisition. Whether it be so or not, depends, as you conceive, upon the meaning to be given to the word flee in that clause. I am favored with your exposition of that term, in that part of

[m] U. S. Const. art. 4, § 2, clause 2.

your message to the Legislature of Alabama, which accompanied the requisition. After the best consideration I have been able to give to your views, I am constrained to differ from you both as to your rule of construction applicable to this clause, and as to the effect of the clause construed by that rule.

In settling the proper principle of construing this clause, we ought not to be influenced by the peculiar character of the case under consideration. If your exposition be once admitted, the clause, as expounded by you, must be applied to all cases whatsoever which fall within its operation. If a State can pass laws on the subject of slavery, making the acts of the citizens of other States, done within their respective States, and while they are actual residents thereof, crimes against the State enacting such laws, and thereby acquire the right to have these citizens delivered to it for trial and punishment; the same State may pass laws on other subjects which will have the same effect, and establish the same right to demand the citizens of other States who may violate these laws, although they have never been within the limits of that State. The right to demand, and the obligation to deliver up, are co-extensive. In cases to which the constitutional right to demand attaches, there is not, and cannot be any right in the Executive on whom the requisition is made, to withhold the offender, whatever be the character of the act which is made a crime by the laws of the State demanding him. I have presented this view of the subject, not merely to exhibit the dangerous consequences that would be likely to result from adopting the construction you have given to this clause of the Constitution, and thence to deduce an argument against the presumption that the framers of that instrument intended to confer a right that in its exercise would produce such consequences; but I have considered the subject in this view principally for the purpose of showing that the obligation on the part of the States to deliver up their citizens in such

cases as the one you have presented, is an essential diminution of the powers they would possess as independent sovereignties; and that the sound rule of construction, which you properly concede to be applicable to those parts of the Constitution which transfer power to the General Government, applies with equal force and pertinency to such parts of it as destroy or transfer any portion of the sovereignty of the States. If the fact that this clause of the Constitution confirms and enlarges the rights of the States, as they existed before the formation of the General Government, constitutes, as you contend, an argument in favor of giving it a liberal construction, is not this argument neutralized by the consideration that what it gives to the States in one respect, it takes away from in another? If, by this clause, the right to demand fugitives is given to the States, in cases in which they had it not before the adoption of the Constitution, the correlative right to refuse, in such cases, to deliver up, which must then have existed in all the States, is also taken away by it. If your construction be correct, this clause has conferred the power on each State to pass laws that have an extraterritorial operation, and to prescribe rules to which the citizens of all the other States must conform, or be subject to the criminal judicature of every State passing such laws. This is undoubtedly enlarging the rights of the States in one respect, but it is a serious diminution of their sovereignty in another. It is more than enlarging former rights; it is conferring new ones; it is giving to some of the municipal laws of each State an extraordinary character — a character that renders them obligatory beyond the territory of the sovereign power which enacts them. It is subjecting the citizens of all the States to new duties, to be imposed on them by a power to which they owe no allegiance, and under the jurisdiction of which they have never placed themselves. It is creating new obligations to be performed by the respective governments of the States.

I have not been able to find the doctrine advanced by any writer on the law of nations, that it is the duty of a sovereign state to deliver its own citizens to a foreign power, to be punished for acts done by them while within the territories of their own sovereign. The passage you have quoted from Vattel, which speaks of delivering up the offender, I am persuaded does not apply to such a case, but to the common case of actual fugitives. The paragraph, preceding the one from which you have made the quotation, is as follows: "If the offended State keeps the guilty in his power, he may, without difficulty, punish him, and oblige him to make satisfaction. If the guilty escape and returns into his own country, justice may be demanded from his sovereign." This writer, not having specified a case like the one under consideration, but having mentioned the cases of ordinary fugitives, must, I think, be understood, to refer to these as presenting occasions for delivering up offenders or withholding them, "according to the nature of the case, or the circumstances attending it."

The demand made by one independent nation upon another to deliver up fugitives,—I mean fugitives in the literal sense of the word—is not I believe, generally regarded as founded in a well established principle of right. The right to demand and the duty to surrender, are sometimes given by treaties; but where there are no treaty regulations, a compliance with such a demand is a matter of comity, and the fugitive is withheld or given up at the discretion of the power within whose jurisdiction he has taken refuge. The provincial government of the Canadas refused to deliver up the citizens of New York who have committed offences in their own State and fled into the British Provinces, unless the crime be such as by the laws of England is punishable with death or the infliction of corporeal punishment. Many crimes of an aggravated character are not thus punished by the British laws. I allude to what I conceive to be the Law of Nations, and

to the practice of independent powers, so far as I am acquainted with it, for the purpose of showing that the provision of the Constitution relative to fugitives is in fact a delegation of power, and should be construed by the same rule that is applicable to the other parts of that instrument which delegate powers. I certainly do not wish to restrict the range of this power. Limited as I conceive it to be, it is in my judgment very salutary in its operation, and I shall very readily give my aid in carrying it to its full extent; but no consideration can induce me to push it beyond what I deem its constitutional boundary. I am therefore compelled by my sense of duty to apply to this clause of the Constitution, the ordinary and generally approved rule of construing that instrument — the rule which gives to the language used therein its ordinary import.

I perceive you are aware of the difficulties which would result from the exercise of this power, if carried by construction to the extent you propose to give it. You have fairly stated the embarrassments under which the prosecuting power would labor in its proceedings against persons brought from other and distant States within its proper jurisdiction, and there tried for acts done in those States. There are other difficulties and dangers incident to the exercise of this power, not brought into view by you, which deserve serious consideration. What occurs daily in the ordinary course of criminal proceedings, may take place in regard to persons transported to a distant jurisdiction for trial. It may happen that an innocent man will be accused, and if demanded he must be delivered up, should your exposition of the Constitution be sanctioned. Under these circumstances, his condition would be perilous indeed. Dragged from his home; far-removed from friends; borne down by the weight of imputed guilt; and unable probably to obtain the evidence

by which he might vindicate his innocence; if appearances were against him, he could scarcely hope to escape unmerited condemnation.

The assumption of a similar power, and the application of it to the American colonists by their acknowledged sovereign to whom they owed full and perfect allegiance, was regarded by them as an act of revolting tyranny, and assigned in the Declaration of Independence, as one of the prominent causes that had dissolved the bands by which they were united to the British king and nation. This consideration renders it, to my mind, very improbable that the framers of the Constitution (almost all of whom were revolutionary patriots) intended to confer on each State the right to cause the citizens of all others to be transported out of their own State to be tried for acts done at home; and I cannot resort to a loose construction for the purpose of extracting such a power from that sacred instrument which emanated from their wisdom and experience.

It is a subject of serious regret to me, that I am obliged to differ from your Excellency as to the rule of construction; but if it were otherwise, I think the result of the application you have made to me would be the same. I am apprehensive, and I say it with all due respect, that any reasonable rule of liberal construction would not extend this provision relative to fugitives, so as to bring the case of Williams within its operation. If we could, by the force of liberal construction, and without unwarranted license, give to the word "flee" in this clause, the same meaning as the ordinary import of the word "evade," as you propose, it would not, in my opinion, remove the difficulty that attends the present application. The meaning of the word "evade," as its etymology indicates, is *to go from;* and if it be assumed that "flee" is of equivalent import to the word "evade," and this word, or some of the expressions commonly used in defin-

ing it should be substituted for the terms "flee" and "fled" in this clause of the Constitution, such an alteration of its language would not so far extend its operation as to impose on the Executive of any State, the obligation to deliver up an offender in a case similar to the one you have presented to me. To satisfy the word "evade" if it were substituted for "flee," the offender must have done some act with a view to elude or escape from justice, and must have gone from the offended State, before he could be brought within the operation of the clause in question. It does not appear in this case that Williams has (and therefore the legal presumption is that he has not) done any act whatever to evade or in any manner to escape from justice, and it is conceded that he has not escaped or gone from the State of Alabama. The substitution then of the word "evade" for "flee" by a rule of liberal construction, does nothing to advance the purposes of this application, unless a rule of still more liberal construction is applied to the substituted word "evade" which would give it an import equivalent to the phrase neglect, or refuse to surrender voluntarily, and that part of the clause, which speaks of the "State from which he fled" is regarded as entirely nugatory in this case. Such a license in construing the Constitution would effectually destroy all the restraints and limitations it imposes, and make it the source of all power that might be desired to invade the rights and sovereignty of the States. By no view that I have taken of this clause of the Constitution, have I been able to discover that it imposes on me, as the Executive of the State of New York, the obligation, or confers the right, to surrender Williams to the Executive authority of Alabama, and I must therefore respectfully decline to comply with the requisition in this case.

I ought not to close this communication without expressing to you my thanks for the very complimentary manner in which you have alluded to me personally in your late

message; but in a much larger measure do you merit the grateful acknowledgments of the people of this State, for the justice you have done to the motives and conduct of a vast majority of them, in relation to the incendiary proceedings of the abolitionists. Our citizens are generally aware of the mischief these proceedings are doing among our Southern brethren. Large and highly respectable public meetings in all parts of our State have already been assembled, and have expressed their sentiments upon the subject in the strongest terms of reprobation. In the proceedings of these meetings; in almost all our public journals; and in our social intercourse, the conduct of the abolitionists has been discountenanced, rebuked and condemned; the claims of the South to remain undisturbed in all their domestic relations, have been recognized in the most explicit manner; the duty of respecting these claims has been strenuously urged, upon the broad ground of plighted faith and political justice; and the strongest appeals that eloquence, argument and patriotism could make, have been addressed to the few abolitionists among us, to induce them to intermit their labors of mischief, and abandon their worse than visionary projects. The feeling of most the entire population here, is what the South could wish it to be. The powerful energy of public opinion has been brought to bear directly on this subject, and has exerted and is now exercising a benign influence in repressing the fanaticism that has arisen in this section of the Union. Many who without foreseeing or considering the pernicious results to which the schemes of the abolitionists would lead, and who had incautiously given countenance to them, are convinced of their errors, have renounced their unfortunate association with these fanatics, and now join in the general condemnation of the abolition movements. The present state of things here in relation to this subject, when viewed from your position, may not seem to justify this statement; but I am wholly deceived in my observations, if it be not

as I present it to you. It is true, there are among us a few infatuated individuals, who, from strange and perverted views of moral and religious duties, or from a love of mere notoriety, have put forth and are continuing their efforts in despite of the strong and sweeping current of public opinion; but it is certainly a great error to take their show of organization, and their boastings, (made principally with a view to check desertion,) for indications of their growing strength, and thence conclude that public opinion, as it exists among us, and operating as it does directly on the subject, is entirely impotent to curb the mad course of this fanaticism. On this, I am sure, you may rely, that the people of New York generally entertain the most friendly sentiments towards their brethren of the South. They know your rights, and will respect them. They know their duties to you, and will fulfill them. They appreciate the importance of the union of the States, and the unnumbered blessings that are suspended on it: they will perform in good faith the obligations it imposes, and if in peril, will put forth their mightiest efforts to sustain it.

Persuaded that these are the views and sentiments of almost the entire body of my fellow-citizens, I have a perfect confidence that their conduct in relation to this subject, and all others which affect the rights and interest of other States, will be such as to answer all reasonable expectations.

I have the honor to be, with great respect,

Your obedient servant,

W. L. MARCY.

To His Excellency JOHN GAYLE, Governor of Alabama.

See People ex rel. Cockran v. Hyatt, 172 N. Y. 177 (aff'd, 188 U. S. 691) where it was held that "to be a fugitive from justice a person must have been corporeally present in the demanding State at the time of the commission of the alleged crime."

WILLIAM L. MARCY, Governor.

ANNUAL MESSAGE.

FELLOW CITIZENS.—Although the aspect of our affairs has in some respects changed during the last year, yet nothing has occurred to interrupt or diminish our general prosperity. Our country sustains the relations of peace and amity with other nations. Our commercial intercourse with them is now better established than at any former period. The prejudices long entertained against our political system have been, in a great degree, removed by its favorable results; and among all enlightened nations, our example is now oftener commended as a wise improvement, than denounced as a dangerous innovation upon the customary forms of government.

At the commencement of the last session of the Legislature, the public mind was much disturbed in several of the states by schemes then on foot for abolishing domestic slavery. Some undoubtedly embarked in them with good intentions; but it is now more evident perhaps than it was then, that many of the agitators were prosecuting political designs under the mask of pretended philanthropy. As soon as the excitement ceased to subserve party purposes, it began to abate. Although these fanatical proceedings have not been entirely discontinued, they are not now of such a character as to attract much public attention here, or furnish any just cause for alarm elsewhere. The mass of our fellow citizens, without regard to party distinctions or religious sects, reprobated them, and united in urgent and strong appeals to the agitators to forego their mischievous designs. It was then a matter of sincere regret, that any had given their sanction to measures tending to disturb the friendly relations among the members of our

Federal Union; and it is now a subject of congratulation, that, rebuked and circumscribed as these proceedings have been, and I trust will continue to be, by the vigorous and healthful tone of public opinion, there is no longer any cause for disquietude on this account.

It is eight years since the public judgment of the country was emphatically pronounced in favor of a change in the administration of the general government. A large majority of the nation, dissatisfied with their political condition, concurred in selecting for their chief magistrate the eminent citizen who now occupies that station; confidently believing that he possessed the rare endowments so indispensably necessary to effect a favorable change in the adverse current of our national affairs.* The extent to which this expectation has been realized, and the various ways in which public opinion has expressed its approval of his conduct, have amply vindicated the wisdom of the selection. It must be conceded that he has managed our national concerns during an eventful period. Questions of the highest importance to the well being of the country, have been violently agitated; principles that lay at the foundation of the government, have been assailed; sectional interests have been arrayed on the side of false and dangerous theories; a great monied monopoly, having vast means at its command, with an unscrupulous disposition to use them in operating upon the hopes and fears of those whose fortunes could be affected by any sudden change in our pecuniary affairs, espoused the cause of the assailants of the administration, and gave a powerful impulse to their measures of annoyance; our affairs at home and abroad assumed at times a most gloomy aspect;—but, amid difficulties the most embarrassing, and obstacles the most formidable, he has pursued his undeviating course, and has finally accomplished all the great purposes rendered neces-

* Andrew Jackson was elected President in 1828, and re-elected in 1832.

sary to re-establish correct principles, and to give a new and better direction to the policy of the government.

He is now about to retire from public life, and it is not at all probable that anything will occur to change the aspect in which his character must present itself to the scrutiny, and abide the judgment of future ages. When the passions engendered in our late and severe political conflicts shall have subsided; when personal and local interests shall cease to employ their fallacies to pervert public opinion; when measures shall be appreciated by their remote as well as their immediate consequences, justice will then pronounce an impartial sentence on the merits of his public conduct. With the ample means we now possess of anticipating this decision, we should distrust our own judgment too much and weaken the just influence of a virtuous and powerful incentive to noble actions, if we could hesitate to believe that his name will stand high on the list of our distinguished patriots and statesmen, and that the record of his public services will constitute one of the most admired and instructive portions of the history of our country.

The recent presidential election has produced less excitement than usually attends such a contest, especially when it involves, as in the present instance, a change of the persons to fill the offices of President and Vice-President. This unusual degree of repose in the public mind, is to be ascribed rather to the peculiar attitude in which the adverse parties were placed, than to any want of a proper solicitude in the mass of the people, as to the character and principles of their political agents. The present administration had been so decidedly approved and firmly sustained by the people, that those who engaged in the election with a view to secure to the country the continuance of its wise and enlightened policy, reasonably anticipated a favorable result; while those who designed to effect a

political revolution, foresaw inevitable defeat, should the contest be so conducted as to involve a direct expression of public opinion, upon a system of measures varying essentially from that upon which our political affairs had been heretofore conducted. Abandoning all hope of success by the votes of the electoral colleges, they resorted to devices, openly avowed in some quarters, and but poorly disguised anywhere, to prevent a choice by the electors, and bring it to the House of Representatives, where the relative power of the States would be lost, and the largest reduced to an equality with the smallest. This expedient has been signally defeated, and the public voice, expressed in the most direct and democratic mode provided by the Constitution[a] has designated as successor to the present executive, the candidate who was supported by the people, on account of his peculiar fitness to sustain the principles, and carry forward the leading measures of the present administration.[1]

The attention of the Legislature has been repeatedly called to the condition of our judiciary system. Such has been the increase of business in our higher courts that they cannot, as now constituted, prevent considerable delay in the administration of justice. Although this evil is more immediately felt by those who are compelled to resort to our judicial tribunals for the redress of wrongs, all classes in the community are interested in providing an adequate remedy. The well-being of society, and the success of all our institutions, depend, to a considerable extent, upon the prompt administration of the laws. This end can be fully attained, only by so enlarging the judiciary system as to make it commensurate with the increase of business resulting from our progress in wealth and population.

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[a] U. S. Const. 12th Am.

[1] In 1836, Martin Van Buren was elected president to succeed Andrew Jackson.

It is generally conceded that something must be done on this subject, but hitherto all attempts to accomplish it have failed, as I apprehend, by reason of a diversity of views as to the kind of modification that will, in the best manner, accommodate this branch of the government to the present and future exigencies of the State. Of the several improvements in the organization of the supreme court which have been proposed, that of increasing the number of judges best commends itself to my judgment. The addition of two judges to the present number, would relieve the court from the burden of business that now oppresses it, secure a more speedy decision of causes, and, for many years to come, render it adequate to the public exigencies. If it shall be deemed expedient to make such a change in the court of chancery as will withdraw from the circuit judges the equity business which they now discharge as vice-chancellors, a less number would be enabled to execute the duties which would then be required of them. Five or six would be sufficient, now and for some time hereafter, to despatch all the business that would devolve on them as circuit judges.

In the court of chancery the accumulation of business greatly exceeds that in the supreme court. The delays are here more protracted, and the consequences to suitors more serious. Here too, the difficulties of devising an adequate mode of relief seem to be more formidable. It is, I believe, the general opinion of those who best understand the nature and course of business in this court, that the multiplication of officers subordinate to the Chancellor, will not effectually overcome the present defect in the constitution of the court. To lay any considerable restraint on the right to appeal from a subordinate jurisdiction, might also be but little better than a denial of justice, and would be scarcely more tolerable than a refusal of it, by neglecting to provide tribunals for its prompt administra-

tion. If the course of appeal is kept open, we have already abundant evidence that the amount of business, in this way, thrown upon the Chancellor, will be more than any man, whatever may be his capacity of mind, his professional acquirements, or physical abilities, can possibly discharge.

If such would probably be the result of the modification suggested, then there appears to me to be only one other mode of improvement that will be likely to accomplish the desired end; and that is, to provide for the appointment of an additional number of equity judges, to be located in different parts of the State, possessing concurrent jurisdiction with the Chancellor — and to allow appeals to be made directly from each judge to a court of review, without subjecting the new officers to the appellate jurisdiction of the Chancellor. The State might then be divided into convenient districts, with a Chancellor in each who should have exclusive jurisdiction therein; or, parties might have the liberty of selecting such court as, at the time, should be least burdened with business. The Chancellor and his associates might be organized as a court of appeals, of which he should be the presiding officer. Into this court all equity causes should be brought before being carried to the court for the correction of errors. The right of appeal to this latter tribunal might then be limited to cases of great importance, either in principle or amount, or appeals might be discouraged by imposing heavy damages and costs upon those who should litigate in the court of the last resort, matters of trifling moment.

I submit these suggestions with some degree of diffidence, knowing that they are open to objections, but in my view of the subject, to fewer in number and less weighty in character than those which present themselves to the other modes of reorganizing the courts of chancery which have been brought under my consideration. The subject is one of great importance. It calls for deliberate reflec-

tion, but the public interest also calls for final action upon it. I apprehend that nothing effectual for the purpose of substantial relief can be done without an amendment to the Constitution, and this will necessarily defer for two years at least the completion of any measure you may approve. I commend it to your early attention, in the hope that you will be able to unite on some plan for improving our judiciary system before the close of the present session.[2]

Although I have gone somewhat into detail in these suggestions, I deem it important that any amendments to the Constitution in regard to this subject that you may propose, should be general in their character, laying down only the outlines of the system, and leaving them to be filled up by the Legislature. This is the only certain mode of securing the concurrence of your successors and the people, who must also pass upon the plan which you may recommend; and in this way only can the details be left open to such modifications as time and experience may suggest, without the necessity of again amending the Constitution.

The enterprise and energies of the people of this State, are powerfully directed to the acquisition of individual wealth; and the course of legislation, naturally controlled by public opinion, has been turned to objects subsidiary to this absorbing pursuit. This is not to be regretted, if other great interests, intimately connected with the public welfare, have, at the same time, been properly cherished.

Public virtue and intelligence are better than national

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2 Several propositions relating to the judiciary were submitted to the Legislature, but none were adopted. Chapter 436, passed May 15, authorized the appointment of a commission composed of three persons to digest and report to the next Legislature a judicial and equity system, which shall be in their opinion adequate to the disposition of all matters and causes which may be presented for decision in the different courts of law and equity in this state. The commission was also required to report an improved system of procedure. The report of the commission was presented to the next Legislature.

wealth, for they are essential to its security and rightful enjoyment. Education in all its branches, but particularly in that which includes the common schools, is the highest object of public concern; and the duty of promoting and extending it, is in all respects, the most important that can engage your attention. The subject assumes at this time a new interest, because more ample means than the State has hitherto possessed are placed within your control, and may be devoted to extend the blessings of popular education. By the deposit law of the last session of Congress, more than five millions of the surplus revenue of the United States, are to be entrusted to the safe keeping of this State until it shall be required by the general government. Unless some unexpected change shall take place in our public affairs, it is not probable that any considerable part of this deposit will be soon withdrawn. The benefit which the State will receive, if it shall accept of the trust, as I think it should, will be the interest to be derived from the investment of the money deposited. According to the plan of investing it, which I shall hereafter suggest, an annual income during the time the deposit remains, of about $300,000, may be added to the funds already devoted to the cause of education. I respectfully recommend that an amount of this income about equal to the sum now annually distributed to the common schools, should be applied as this sum now is, to their support; thus making the annual distribution to them from the treasury $220,000. I also recommend that a liberal portion of this income should be appropriated to the academies in such a manner as will not only increase the amount annually distributed to them, but also improve the Literature Fund; having in view principally the design of rendering them more efficient as seminaries for educating common school teachers. And I further recommend, that the remainder

of the income from the deposit money be added to the capital of the Common School Fund.[3]

The propriety of the last branch of this recommendation, may perhaps be less obvious than the two former, and may therefore require some explanation. It should not be forgotten that this deposit is only temporary, and that in the course of a few years, perhaps sooner than is now anticipated, it may be withdrawn. By such an event, the State will of course be deprived of this source of income. Should the whole of it be annually expended in the support of common schools, it would require some time to place them in a condition to avail themselves, to the best advantage, of this great increase of means; and when brought into such a condition, they would decline, should these means be wholly withdrawn, and the system be thrown back for support on the present School Fund. The consequences of a retrograde movement in this important branch of education, are justly to be feared, and, if possible, avoided. The benefits of a sudden impulse that cannot be long continued, are not to be compared with the advantages of an enduring improvement, in what is properly regarded as the foundation on which the success of the system mainly depends — the fund inviolably devoted to

[3] By chapter 2, passed January 10, the State accepted the United States deposit on the terms and conditions specified in the act of Congress of June 23, 1836.

By chapter 150, passed April 4, the amount received from the federal government, about $5,000,000, was apportioned among the several counties of the State according to population, and the act contained provisions for loaning the fund by commissioners appointed in each county.

In 1838, by chapter 237, the income of the United States deposit fund was appropriated for the "purposes of education and the diffusion of knowledge." The sum of $110,000 was appropriated for the support of common schools. Fifty-five thousand dollars annually for three years for district school libraries; $6,000 annually for five years to Geneva College and the University of the City of New York; $3,000 to Hamilton College for the same period; $28,000 to the literature fund. Each academy receiving $700 was required to maintain a department for the instruction of teachers. The residue of the income was added to the capital of the common school fund.

its support. In connection with this view of the subject, it should be recollected that the present fund cannot expand in proportion to the increased wants of the State. The unsold public lands constitute the only means now belonging to it of increasing its productive capital, and they are not of great value. I, therefore, think it wise in every point of view, that while you are greatly increasing the public benefaction to this most useful of all purposes — the general education of the people — you should, to a considerable extent at least, devote the temporary means now placed within your reach, to enlarge the permanent fund on which the system rests, and thereby not only guard it against the evil effects of a decline, but ensure its gradual advancement. The importance of providing competent teachers, and the embarrassments under which the system has hitherto labored for the want of them, must, I think, commend to your favorable regard the suggestion of devoting a part of this income to institutions designed to supply this deficiency.

The general superintendence of the academies, including, as a matter of course, the departments erected therein for the instruction of common school teachers, is committed to the Regents of the University. The members of this Board are widely dispersed over the State, serve without compensation, and rarely assemble in the recess of the Legislature. There would seem to be a fitness in giving the immediate direction and supervision of these departments to the same authority that superintends the common schools. This authority has been for a long time exercised by the Secretary of State; and the very satisfactory manner in which these arduous and complicated duties have been discharged by that officer, should, I think, disincline you to yield to the suggestion which has of late been made, of creating a separate department, to be charged with the superintendence of public instruction. Should it be necessary to do anything upon this subject, and I apprehend it

will be, if, to the present duties of superintending the common schools, the direction and supervision of the departments for the instruction of teachers should be added, all the desired results would probably be attained by allowing the Secretary of State an additional deputy, to aid him in the performance of this portion of his official duties. An arrangement analogous to this was made in the Comptroller's office, in relation to the canals, which has proved serviceable as well as satisfactory to the public.[4] It is worthy of your consideration, whether this is not a fit occasion to examine the common school system with a view to improvements. The changes most desired have reference rather to the efficient execution of the details of the present system, than to any alteration in its essential features. The system, as it is, though not faultless, has not such striking defects as to render it wise to make hazardous experiments upon it. If not in all respects so perfect as could be desired, it is generally conceded, all circumstances considered, to be the best anywhere in operation.

I should not do justice to the patriotism and public spirit of the times, if I should pass unnoticed and uncommended, the individual efforts now exerted, in a higher degree and in a more efficient manner than heretofore, for the promotion of popular instruction. Convinced that the security of property and the preservation of civil rights,—that domestic happiness and public prosperity are sustained and promoted by diffusing education through all ranks of the people, men of literature are devoting their talents, and men of wealth are freely contributing their means to give success to the cause of public instruction; and assisted, as I doubt not they will be, by the powerful

[4] By chapter 200, passed April 14, 1837, the compensation of superintendent of common schools was increased, and provision was made for additional clerk hire. The Governor's suggestion as to a special deputy for school purposes was not adopted.

co-operation of the Legislature, its rapid advancement may be confidently anticipated.

The whole number of organized school districts in this State, in 1835, was 10,207. From 9,696 of these, reports have been received by the Superintendent. The number of children between five and sixteen years of age, residing, on the 31st of December of that year, in the districts from which reports have been received, was 538,398, and the number instructed within that year was 532,167. The amount of public money distributed in the same year, was $313,376.91. In this sum is included the $100,000 paid from the income of the Common School Fund, and $19,873.58 derived from town and local funds. The residue, amounting to $193,503.33, was raised by taxation on the property of the several towns and cities. A further sum of $423,643.61 was paid by the inhabitants,—thus making the total amount expended in 1835, $739,020.52, all of which, except a few thousand dollars expended in the city of New York on schoolhouses, was applied to the payment of teachers' wages.

Though the common schools forcibly commend themselves to the liberal patronage of the Legislature, as institutions calculated to exert a powerful influence upon the destiny of the State, our colleges and academies are not to be viewed with unconcern. They are important to the general system of education, and are worthy of your fostering care.

The annual report of the Regents of the University, presented at the last session, shows them to be in a prosperous, and, generally, in an improving condition. That document, and a similar one which will be presented to you in the course of this session, will furnish the information required to guide your action in relation to them. In various parts of the State there are academies in a flourishing condition, that are not under the supervision of the Regents of the University, and do not therefore receive any

portion of the income of the Literature Fund. If public usefulness constitutes a claim to share in the public bounty, some of these academies should be allowed to do so. I therefore recommend that seminaries deriving their charters from the Legislature, should be permitted to subject themselves, under such regulations as may be deemed proper, to the visitation of that body, and partake of the avails of the Literature Fund.[5]

At the last session of the Legislature an act was passed providing for the establishment of a State Lunatic Asylum. Shortly after its passage commissioners were appointed to select a suitable site for the Institution. They entered on their duties in May, but owing, I believe, to some difficulties, they have not yet completed their arrangements in relation to its location. It is to be regretted that there has been any delay in carrying into effect a measure which promises to be of such signal advantage to a severely afflicted class of our fellow beings.

Our penitentiary establishments continue to present favorable results. The total number of convicts in them on the first of December last, was 1,382, being 69 less than they contained a year previous to that date.

The number discharged by pardons the last year has been less than that of the previous year. The number of commitments at each prison has considerably diminished. In the Mount Pleasant prison, the number has decreased for the last four years, with the exception of 1834, and in the past year it was 107 less than in 1832. The accounts of the Auburn prison exhibit a like favorable result in this respect. The commitments during the last year were about 60 less than those in the preceding year, and less also

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[5] No general law extending the scheme of distributing the literature fund was passed, but several academies were incorporated by charters which expressly provided that they might share in the literature fund if the Regents were satisfied that they had complied with the law entitling them to such distribution.

than they have been in any year since 1831. It is gratifying to have this satisfactory evidence that while our population is increasing, the commission of crimes is less frequent. Favorable reports have been received from both prisons in relation to the health and general good conduct of the convicts.

The fiscal affairs of the prisons are also in a good condition. In the Mount Pleasant prison the earnings have exceeded the expenditures during the year ending on the 30th of September, $15,322.81. Considerable progress has also been made in erecting a prison for female convicts; a range of the building, containing seventy-two cells, has been completed.[6]

The balance in the hands of the agent of the Auburn prison, at the end of the fiscal year, was $2,833.21. In consequence of a want of surplus funds, nothing has yet been done at this establishment toward building a prison for female convicts. The law requiring the sheriffs to be paid, out of the surplus earnings, for transporting convicts to the prisons, has subjected the funds to heavy drafts. This item of payments at the Auburn prison has amounted to $7,677.87 since the first of June, 1835, while the payments on this account, at the Mount Pleasant prison, were but $2,559.07.

The Common School Fund has now a capital of $1,917,494.17, and yielded a revenue last year of $118,486.67. Of this income, $110,000 is hereafter to be annually apportioned to the common schools throughout the State, and applied to the payment of teachers' wages.

The capital of the Literature Fund is $267,142.87, and the revenue derived from it last year was $18,271.11. The sum of $12,000 from the income of this Fund, is annually

[6] Chapter 92, passed March 20, provided for the transfer of female convicts from Bellevue to the woman's prison at Mount Pleasant, and required the confinement in the same prison of women thereafter convicted in the first, second and third senate districts.

distributed to the academies under the supervision of the Regents of the University, and the further sum of $3,200 is appropriated to the support of departments in eight of them, instituted for the instruction of common school teachers.

The capital of the Bank Fund has accumulated to the sum of $538,861.50, and the revenue for the last year was $22,021.27. This sum will pay the salaries of the Bank Commissioners, and leave for distribution among the contributing banks, $16,000.

It became necessary in the course of the last fiscal year, in order to meet the demands on the Treasury, to make temporary loans from the Literature, the Bank and the Common School Funds, amounting in all to $338,309.69. The means in the Treasury at the end of the year applicable to the reimbursement of that sum, were only $59,-315.89. The balance, of the temporary loans, being $278,-993.80, can only be paid by new loans. Including this balance, the debt chargeable on the General Fund is $1,147,-972.82.

On the first of July last the surplus revenue derived from the Erie and Champlain Canal Fund, had amounted to a sum amply sufficient to pay off the remainder of the debt contracted for the construction of these two canals. By this event the auction and salt duties were discharged from the constitutional pledge securing them to that Fund, and restored to the Treasury for general purposes.[b] This addition to the income of the General Fund will make it adequate to the charges on the Treasury for the ordinary expenses of the Government. The portion of the canal debt incurred on account of the Erie and Champlain canals, yet unpaid, amounting to $3,582,502.73, being provided for by the surplus revenue, may be considered as paid. But there is yet a further canal debt including the temporary

[b] Const. 1821, art. 7, § 10; Am. 1833, 1835.

loans made during the last year, of $3,214,304, contracted on account of the Oswego, the Cayuga and Seneca, the Chemung, the Crooked Lake and the Chenango Canals, and to this sum must be added about $3,000,000, to be incurred in the construction of the Black River and the Genesee Valley canals, for the reimbursement of which, relying solely on the income from these canals, the prospect is very faint and distant. Indeed it cannot be doubted that for many years to come, other means than this income must be resorted to even for the payment of the annual interest on this debt.

In various parts of the State much solicitude is felt for the further extension of works of internal improvement. Considering the magnitude of those now authorized, some of which are scarcely commenced, the expediency of embarking in others at this time may be questionable. The future expenditure on public works already authorized by the Legislature, including the enlargement of the Erie canal, will amount to more than $15,000,000, besides the $3,000,000 for which the State has loaned its credit to the New York and Erie Railroad Company. I have presented my general views on the important subject of internal improvement in former messages, and to them I respectfully refer you for my opinions as to the system of finance which should be adopted; the character of the works in which the State should engage; and the extent to which the benefits of the system of internal improvement can be reasonably diffused.

The Chenango canal may now be considered as completed. It is entirely so, with the exception of one reservoir, and will be ready for use at the opening of navigation in the spring. This will add ninety-six miles to our line of canal navigation, making in all six hundred and fifty miles. By these canals a water communication is opened from the Hudson river to the northern and west-

ern lakes, to the principal interior lakes of the State, and to the Susquehannah river.

The Chenango canal has cost about $2,000,000. Claims for damages are yet to be adjusted and paid, the amount of which cannot be accurately estimated; and allowances to contractors are also authorized to be made, which will probably be about $250,000. As this canal has not yet been in operation, any estimate of the receipts from it must be conjectural; they will not, it is believed, be equivalent to the expense of repairs, superintendence, and interest on the debt contracted on account of this work. The income from the lateral canals during the last year, was $94,507.65 less than the payments on their account, including the interest on the debt. This deficiency exceeds that of the preceding year, by more than $50,000. The annual deficits of these canals have been paid from the treasury, and have greatly augmented the debt chargeable on the General Fund. During the next year, there will be added to this amount of deficiencies, an item, larger, probably, than any other, on account of the Chenango canal.[7]

The total amount of tolls, for the year ending 30th of September, on the Erie and Champlain canals, was $1,548,-536.18, and the whole income of the fund belonging to these canals, from all sources, was $1,947,483.61; and after deducting all expenses, the net revenue is $1,341,934.96. The tolls on the lateral canals for the same year, are $56,-714.54. On each of the canals, there has been a considerable increase in the amount of tolls received.

During the last season, the Canal Commissioners caused parts of the routes for the Black River and the Genesee Valley canals to be re-surveyed; and it is expected that

[7] Chapter 27, passed February 16, authorized a loan of $150,000 for completing the Chenango canal, and chapter 183, passed April 12, charged on the general fund the expense of maintaining the Chenango canal, and also the interest on the construction debt in excess of the income derived from tolls thereon.

the entire lines of both will be put under contract in the course of the next season. Considerable progress has also been made towards executing the important measure of enlarging the Erie canal. The Commissioners have already entered into contracts for different kinds of work to be done at various points on this canal, from the Hudson River to Rochester, which will involve an expenditure of about $2,800,000.

Your early attention is respectfully invited to that provision of the act of Congress, regulating the deposits of the public money, which proposes to entrust the surplus to the States. Whatever may be your opinion as to the course of legislation which has resulted in accumulating such a vast amount of revenue beyond the wants of the Government; whatever views you may entertain as to the mode which has been adopted for disposing of it; however strong may be the objections to the unequal ratio of distribution, you will not hesitate, I presume, to accept the deposit on the proposed terms. You will, therefore, provide for giving the certificate required by the 13th section of that act, subjecting the State to a legal obligation for the safe-keeping of the sum that shall be received, and pledging its faith for its repayment. In the provision you may make for receiving and investing the proportion of the public money allotted to us, you should constantly bear in mind, that the State is not the owner but the depositary of this fund — bound, in good faith, and in interest too, to deliver it up whenever it shall be required for the wants of the general government. The amount to be deposited with the several States, is about $36,000,000. If the exigencies of the general government shall require this amount — and that such will be the case, sooner or later, we ought not to indulge a doubt — it must resort to the fund thus deposited with the States, or to taxation, to satisfy its wants. By the constitutional rule of apportioning direct taxes,[c] the quota

[c] U. S. Const. art. 1, § 2, clause 3.

which would be required of this State, in order to raise a sum for the General Government equal to that to be deposited with the States, would be about $616,000 more than the sum which it will receive under the provisions of the present deposit law. Regarding this deposit as a favor to the States, we have a just cause of complaint against the principle on which the distribution is made. Claiming, as in fairness we have a right to do, the same ratio in apportioning favors of this sort, as that which is established for imposing burdens, New York will receive, by the operation of this law, less than its just proportion, by this large amount. Our interest, therefore, reinforces the obligations of good faith upon us — if they could ever be supposed to need reinforcement — to consider the sum that may be received in no other light than a mere deposit, and to hold the general government also bound in good faith, to resort to the fund thus deposited, rather than to taxation, to supply any future deficiency in its ordinary revenue to meet the demands upon its treasury.

In devising a plan for the investment of this deposit, you will certainly not be unmindful of the consideration that all classes of our citizens, in all parts of the State, have a just claim to participate in its benefits; that plan, therefore, which gives the widest diffusion to these benefits, is to be preferred to all others. Having regard to this object, as well as to the productiveness of the fund, I respectfully recommend that the money to be received under the deposit law should be distributed among the several counties of this State, for the purpose of being loaned therein. There would be no difficulty, I presume, in loaning the money to individuals, on abundant and certain security, at the legal rate of interest. By this mode of investment, it will yield to the State, after paying the loan officers a liberal compensation for their services, an income of at least six per cent. It would thus be distributed equally throughout the State, and all interests would par-

take of its benefits. To the agricultural interest, which, on account of its magnitude and importance, is entitled to your particular consideration, this plan of distribution will afford accommodations to a larger extent, and in a better manner, than any other that has been suggested. It will, in a great degree, relieve such among that class of citizens as are under the necessity of borrowing money, from the hard terms which private lenders too often impose, and from the embarrassments of bank loans, arising from short credits, and the withdrawal of accommodations when they are most wanted. To any mode of accommodating the public at large with the use of this money, through the agency of the banks, there appears to me to be invincible objections; nor have I been able to regard with favor the plan which some have suggested, of spending it, or any part of it, on works of local improvement. This mode of expenditure would be partial as to its advantages. It would convert the deposit into a State debt, with no prospect of immediate income. The money expended could never be recalled, and only refunded by imposing a general burden on the whole State, and subjecting large portions of the people, benefited but slightly, and perhaps not at all by the expenditure, to contribute equally with all others towards its repayment.

If the recommendations heretofore made in relation to the appropriation of this income, are adopted, the whole of it, amounting to about $300,000 annually, will be devoted to the purposes of education; and I can conceive of no other use to which it can be applied, that will in an equal degree contribute to the present and future welfare of the State. [See note 3.]

In contemplating the advantages which may be derived from this surplus revenue, we ought not so far to overlook the true interests of the people, or disregard the reciprocal rights and duties of the federal and State governments, as to yield the slightest approval to a policy of legislation

by the General Government, that has in view the accumulation of surplus funds to be distributed among the States, or even temporarily deposited with them. I am unable to persuade myself that the people of the United States can be induced to regard as a boon any distribution of their own money, needlessly extracted from them by taxation, even if the whole amount thus taken could be restored; but this can never be the case, because a considerable sum must be retained to pay the expenses of collection. Aside from their interest, it would ill comport with their character as citizens of sovereign States, to become tributaries to the General Government, for the sole purpose of receiving back a part of the very contributions they had been required to pay. The States are certainly capable of judging of their own wants, and have the power and ability to satisfy them; they will not, therefore, it is hoped, be so unmindful of what is due to themselves as sovereign political communities, as to confer upon another government the discretion of judging of their necessities, and also the right of providing for them, by imposing such taxes as it pleases upon their citizens. The exercise of this power by the General Government, if acquiesced in by the States, would undoubtedly be attended with pernicious consequences; it would create new relations between the Federal and State authorities, and derange the operations of our political system. The right of taxation was not conferred on Congress for any such purpose, and I trust such an exercise of it will never be sanctioned by public opinion. It is undoubtedly the duty of the general government to adopt such measures as will effectually relieve the people from useless burdens, by reducing its revenues to its necessary wants.

The present condition of our pecuniary affairs, and the course of legislation generally anticipated in relation to subjects connected with the currency, seem to require of me some further views on this topic than those presented

in my former messages. The experience of the last year has given much dear bought instruction. It must now, I think, be generally conceded that the increase of what is called banking capital has no agency in preventing and very little in removing a pressure in the money market. Such a pressure is ordinarily the result of over trading. This is undoubtedly the principal cause of our recent and present difficulties, but they have been greatly aggravated by a combination of other causes, the chief of which is the operation of the deposit law of Congress. A large amount of the surplus revenue had accumulated in the city of New York. The use of it had been required by the exigencies of commerce. The deposit banks, yielding to the public demand, and fulfilling the expectations of the government, had accommodated the commercial community, to the extent of the means in their possession. After the money had thus been loaned, the collection and transfer of any considerable portion of it, or even the measures preparatory to such a transfer, would at any time and under any circumstances have disturbed the business relations of the country, and never could there have been a more unpropitious conjuncture in our pecuniary affairs for such an operation than that which existed when it became necessary to execute this law.

In prosperous times men too frequently forget to proportion their business transactions to their means. Wherever there is a system of credit — and one of some kind or other must exist in every commercial state — that system will be occasionally overwrought, and for a season at least, become more or less disordered. It is the course of business and not the character of the system that produces this result; but all systems of credit are not, therefore, equally good, nor is the effect of legislation upon them a matter of public unconcern. Laws may force things out of their natural channels, and obstruct the free operation of those causes which must be mainly relied on to admin-

ister relief in seasons of general embarrassment. I do not expect in any state of things that the occasional recurrence of such seasons will be avoided; but when all useless and injurious restraints are removed, speculators and men of business, who, in their ardent pursuit of wealth, have transgressed the limits prescribed by prudence to their operations, will be left to struggle with the difficulties they have created for themselves as well as for others, without a pretence for imputing to the laws of the land the effects of their own unwise conduct. Banks offer tempting facilities to those who in easy times are inclined to use them too freely. They then lend not only their capitals but their deposits, and the amount of bills which can be kept in circulation. Being debtors to the amount of their circulation and deposits, and the more exposed as this amount is payable on demand, they have to provide for their own wants in times of pressure and panic, and cannot therefore afford the usual accommodations to their customers, when the necessity for such accommodations is most urgent. A policy which makes those institutions the main resource of the community in such emergencies, does not seem to evince the highest degree of wisdom. Their ability, in no case expands, but generally contracts, as the public wants increase.

In every country where banks, with the exclusive privilege of furnishing the circulating medium, are numerous, and particularly where the business of loaning money is embarrassed by restraints imposed on other associations, and on individuals, it is reasonable to expect that pecuniary pressures will be frequent and severe; and if not more frequent they will probably be more severe, and continue longer than in countries where all sources of relief are left entirely open, and competition is permitted to operate freely in adjusting the relation of equality between demand and supply. In this respect, the operation of the statute usually called the restraining law, so far at least as it

denies to individuals and associations the right of receiving deposits and making discounts, is unquestionably injurious.

It is the essential characteristic of private property, that the owner should not only have the right of exclusive possession, but the liberty of free use, modified only by the equal rights of others to enjoy their own property, and the public right to provide for the general welfare. The reasons, therefore, that should induce the Legislature to enact or continue any law circumscribing the rights of individuals in relation to their private property, must arise from a strong and clear necessity of providing for the well being of society. I have not been able to convince myself that any such consideration can be adduced in support of that part of the restraining law, which interdicts to the community at large the right of receiving deposits and making discounts. If it originated, as is generally believed, in a desire to give this kind of business exclusively to incorporated banks, and subserves no better purpose than to carry out this design, I anticipate a ready disposition on your part to repeal it.

There is nothing, I believe, in the history of the times when this law was first enacted, which is calculated to inspire a high degree of respect for it, or from which sound arguments for its continuance can be fairly deduced.

The restraint in respect to deposits and discounts, being regarded as injurious to the public, and devised as a special favor to the banks, the law that imposes it is not efficiently sustained by the moral sense of the community, and is constantly evaded with impunity. The efficacy of laws depends, in a great degree, upon the concurrence of public opinion in their favor; and when for the want of this sanction, particular enactments are in a great degree inoperative, they should be repealed, that the evil example of disregarding them may not weaken the force of the salutary sentiment which all should feel — that obedience to laws, without regard to individual opinions as to their expediency, is a high moral duty.

While I am decidedly of opinion that the restraining law ought to be so modified as to permit individuals to receive deposits, make discounts and keep offices for such purposes, I feel bound by a strong sense of duty, to urge upon you the necessity of retaining that part of it which prohibits the issue of "notes or other evidences of debt to be loaned or put in circulation as money." To some extent this clause may perhaps be safely modified, but not so far as to expose the public to the evils of an unsound paper circulating medium. If persons, either in their individual capacity or associated as partners, are permitted to issue such kind of notes as will be likely to be used in the ordinary transactions of business, the soundness of our currency will inevitably be impaired. In my opinion, no supervision by public authority that can be devised — no regulations short of a prohibition to issue such notes, would constitute a sufficient safeguard against the evils to be apprehended.

The claim to make the paper currency of the country, stands upon a foundation very different from that which asserts the right to use private property in any and all kinds of business transactions. There is a broad distinction between free trade in money and the unrestricted privilege of making a fictitious representative of money. If all have the right to use their money in any way they please, they can have no cause to complain that they have not also the liberty to make a substitute for the public use, which would not fail, in some instances at least, to be perverted to the public detriment. If individuals and associations were permitted to enter into rivalry with the banks, in supplying a paper circulation, without being laid under restrictions as effectual to prevent abuses as those now imposed on these institutions, and subjected to a supervision as constant and vigilant as they are, it would be idle, I fear, to hope for an exemption from the evils of an excessive and vitiated currency. The task of devising for all individuals

and associations that might choose to issue bills for circulation, such restraints as the public good will require, would be very difficult, and that of securing the faithful observance of them, nearly or quite impossible.

The restriction imposed by all governments upon the power of coining money, has never been considered the invasion of a common right.[d] The reasons which sustain this restriction upon the coinage of the precious metals, apply with equal force to the power of regulating and controlling the issues of paper money which is used as a substitute for a metallic currency. The right and the expediency of exercising a controlling power over both these subjects by the Legislature, arise from the necessity of affording general protection against fraud and imposition. If the duty of the government were to be graduated by the evils likely to ensue from a neglect of either, the care of sustaining the soundness of a paper currency, would seem to me to be the most imperative. My conclusion on this branch of the restraining law is, that the privilege of issuing a paper circulating medium cannot be claimed as the restoration of a general right which has been unnecessarily withheld by the Legislature, and that this power ought not to be confided to all individuals and associations that may desire to have it, because it cannot, in my judgment, be thus given without exposing the public to evils against which it is the duty of the Legislature to afford ample and certain protection.[e]

In connection with the subject of repealing the restraints on this branch of business, it is highly probable that the policy of the usury law will be brought into discussion.

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[d] U. S. Const. art. 1, § 8, clause 5.

[e] Chapter 20, passed February 4, modified the restraining law (1 R. S. 712) referred to in the Governor's message, by permitting persons or associations of persons not incorporated, to keep offices for the purpose of receiving deposits, and for discounting notes or bills. Foreign corporations and domestic incorporated banks, and directors and officers thereof were excluded from the provisions of the amendment.

The legislation of former times undoubtedly took a wrong direction (and the present age has not fully corrected the errors), when it assumed the guardianship of private business transactions, and endeavored to regulate the judgment and control the discretion of men in relation to the management of their ordinary affairs. The usury law appears to me to be the fruit of this error. Money like other articles of merchandise varies in price; and the same arguments which sustain the policy of fixing its value by legislative enactments, might be applied with equal cogency to many other objects of traffic. I cannot conceive any sufficient reason for not leaving the price of money, like that of other commodities, to the free operation of the general rule of demand and supply. We all know, that in defiance of the law, it is now, and ever has been, in a great measure controlled by this rule. Any man who has money to lend, can readily, if he chooses, get the market price for it, however high that price may be above the legal standard. The law undoubtedly embarrasses the negotiation between the borrower and lender, and subjects the former to the payment of additional charges, but the lender gets his price.

The succinct view of the object and operation of the usury law, would seem to indicate the expediency of repealing all its penal clauses. A more ample discussion of its policy, bringing under full consideration its supposed advantages as well as its injurious effects, would probably lead to the same conclusion. If, however, doubts should be entertained as to the propriety of going so far at this time, I think you should not hesitate to exempt from the penalties it imposes, all negotiations in regard to what may be properly considered commercial paper arriving at maturity within six months. This modification of the usury law should not, however, in my opinion, extend to banks or other incorporated companies. By the favor of the Legislature, the business of making loans and discounts is now mainly engrossed by them. They would, therefore, have

it in their power, by withholding their accommodations when there is no necessity of doing so, to raise the rate of interest. The commercial community, confiding in the character of those who manage these institutions, may not apprehend any evils from this source; but the Legislature will not, I presume, feel itself at liberty to repose upon this security, and leave the public exposed even to the chance of suffering by the abuse of this power. Besides, I am persuaded that the banks generally desire that the restrictions now imposed upon them in this respect, may be continued. They could scarcely hope to participate in the benefit of an increase in the rate of interest without falling under the suspicion of having contributed to a state of things so decidedly advantageous to them.[9]

I have in former messages expressed my views somewhat at large against the policy of increasing the banking capital of the state. I take the liberty to refer to them for an exposition of my present sentiments on that subject, and to recommend that you should abstain from granting any new charters, or increasing the capital of the existing banks at the present session.

If I could anticipate a result different from what I conceive sound policy and public sentiment indicate, I should feel myself called on to state the decided objections which exist against the mode heretofore pursued, of distributing bank stock. I have at no time approved of that mode, and three years since suggested to the Legislature the expediency of a public sale or a change in the manner of distribution which would in my judgment prevent or at least mitigate the evils of it. These evils are much more manifest now than they were then. I shall, however, forbear further to urge the adoption of a remedy in the confident belief that you will not authorize any new stock of this description to be issued.

[9] The usury provisions in the Revised Statutes were amended by chapter 430, passed May 15, but without adopting the Governor's suggestions. This act was sustained in Perrine v. Striker (1839), 7 Paige 598.

More than two years since the Executive, by the direction of the Legislature, opened a correspondence with the Governors of the neighboring States, in order to obtain a concurrence by those States with this in the measure of suppressing the circulation of small bills. It was generally conceded that such a measure would improve the paper circulating medium of the country. It is to be regretted that we have not had the general co-operation of those States in carrying it into effect. The bills of our own banks, under the denomination of five dollars, have been withdrawn, from circulation, but similar bills from some of the adjoining states, though prohibited by law, yet continue to circulate here, particularly in the border counties. It is very desirable to provide for the effectual execution of the law prohibiting their circulation; and I recommend this subject to your attention. We have constantly new evidence of the wisdom of the law suppressing the circulation of small bills. A large amount of coin has been diffused through the community since this law went into operation. Our currency has acquired additional stability, and though the present pecuniary pressure has been quite as severe as any previous one, there has not been to my knowledge the slightest indication of a doubt as to its soundness; and the consciousness on the part of the banks, that they enjoyed unimpaired public confidence, has relieved them from all apprehensions of a return of their bills, otherwise than in the regular course of business, and they have therefore gone further than under other circumstances they could have done, to accommodate the public in this period of embarrassment.[10]

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[10] By chapter 74, passed March 15, the method of appointing bank commissioners was changed, and the power of appointment was vested in the Governor and Senate.

By chapter 360, passed May 9, banks were authorized to subscribe to loans on account of the Chenango, Black River and Genesee Valley canals. Chapter 450, passed May 16, limited the circulation of bank bills according to a

The important measure of executing an accurate and complete geological survey of this State, and making a collection of its botanical and zoological productions, was adopted by the last Legislature. The appointment of the persons to perform this work, and the direction as to the manner of doing it were committed to the Governor. It was very desirable to have it executed by persons of unquestionable scientific qualifications, and much difficulty and some delay attended the selection of them. The appointments were, however, completed sufficiently early in the season to give an opportunity to the geologists to make a general exploration of their respective districts, preparatory to a more minute and accurate survey. These geologists, as well as the persons to whom the botanical, zoological and mineralogical departments have been committed, will prepare reports, to be laid before the Legislature at its present session. Considering the short space of time in which most of them have been engaged in this work, it would not be reasonable to expect that these reports will contain anything like a full description of the geological character of their districts, or much minute information; but I anticipate that they will give such indications of the abundance and value of our natural resources, as will commend to general approbation, a measure so necessary to develop them, and to accelerate the period of applying them to various useful purposes. In the directions I have given for executing this undertaking, I have generally conformed to the outline presented in the report of the Secretary of State on this subject. I shall avail myself of another occasion, to lay before you a detailed statement of the plan which has been adopted for executing this survey.[11]

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specified ratio based on the capital of each bank. Chapter 474, passed May 16, apparently in response to the Governor's memorandum of that day approving the suspension act, chapter 450, was intended to provide for the case of a debt due from one bank to another. Chapter 450 was held unconstitutional in Commercial Bank v. Sparrow (1846), 2 Denio, 97.

[11] As to the geological survey see Special Message of February 11.

In the present organization of the militia, it depends in a great measure for its efficient support, on the patriotism of those who are required to perform military service, and especially on that of the commissioned officers. To equip and perform the duties imposed by law in a creditable manner, requires considerable time, and is attended with burdensome expenses; but I feel warranted in saying, that these duties have been as well attended to, and these burdens as cheerfully borne, during the last year, as at any former period. Personal observation enables me to speak of the militia of the city of New York in terms of high commendation. It is gratifying to know, that the militia system is well sustained in that part of the State where its influence is most felt, and its aid is most likely to be needed. No state legislation can make this institution what it should be in the present circumstances of the country. To Congress alone the duty appertains of reducing its burdens, preserving at the same time its general benefits and necessary efficiency. The numerical force of the militia of the State, as will appear by the Adjutant General's report, shortly to be laid before you, is one hundred and ninety-three thousand, six hundred and ten.

In the course of the last summer, I was informed that the United States were about to negotiate with the Indians, who had removed from this State to Wisconsin, for an exchange of their lands in that territory for what was deemed a more eligible country for them, west of the State of Missouri, and that it was intended that the treaties should embrace the tribes yet remaining in the State of New York. As the provisions of the treaties would probably present strong inducements for them to join with their brethren at Green Bay in removing to this new and more desirable situation, I was requested to appoint a commissioner to cooperate in these negotiations. Although I had not, as I conceived, the power to make such an appointment, yet as

the proposed objects would be advantageous to the State, and still more so to the Indians residing therein, I requested Mr. Charles C. Brodhead to assist the U. S. Commissioner in the conferences with them, at the same time advising him that I had no legal authority to give him an appointment for such a purpose, and that he must rely, if he complied with my request, on such provision as the Legislature should choose to make for his compensation. He rendered valuable assistance to the U. S. Commissioner, and treaties were concluded embracing our resident Indians, and offering most liberal terms to such as may be willing to emigrate. I herewith transmit the letter of these gentlemen, which contains an account of their proceedings, together with an exposition of the advantages held out by these treaties, to emigrating Indians. It is important to the present and future well-being of this race, that they should embrace this opportunity of removing from the contiguity of the white population; and I doubt not you will regard it as a duty to them and to the State, to do what can be consistently done to facilitate the execution of this measure. I suggest to you the propriety of allowing a compensation to Mr. Brodhead for his services, and also of providing more effectually against the intrusion upon the Indian lands mentioned in the accompanying letter, and assigned as one of the causes of the unwillingness of the Indians to emigrate.[12]

I also invite your attention to the laws regulating the pilots for the port of New York. Complaints have been made that the present establishment is so limited as to their number, or so defective in its organization, as to be inadequate to subserve the wants of commerce. You will, I presume, investigate the causes of these complaints, and make such alterations and improvements in the laws on this sub-

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12 The appropriation act, chapter 478, passed May 16, allowed Mr. Brodhead $205 for services and expenses.

ject, as will place the business of piloting in a condition to afford the highest degree of protection to life and property.[13]

Having, in compliance with the injunction of the Constitution, presented to you the general condition of the State, and alluded to several important subjects which ought, in my opinion, particularly to occupy your attention, I shall, in concluding, avail myself of this occasion to render my grateful acknowledgments to the people of this State for having again confided to me the duties of their chief magistrate. Deeply impressed with the responsibilities of the station, I shall devote my time and my abilities to their service, as the best return I can make for their generous confidence. Humbly trusting to the Wisdom which is from above, for assistance in our deliberations, I indulge the hope that we may be led to adopt such measures as will protect the rights, advance the interest, and promote the general prosperity of our constituents.

W. L. MARCY.

Albany, January 3, 1837.

SPECIAL MESSAGES.

January 5. To the Assembly: Transmitting the annual report of the Adjutant General.

January 12. To the Assembly: Transmitting the annual report of the Commissary General.

February 9. To the Assembly: Transmitting resolutions adopted by the Legislature of Maryland recommending the extension of the franking privilege to the Governors of the several States, and also to the members and chief clerks of the State Legislatures, if in the latter case it could be granted without interference with the proposed reduction on private postage.

[13] Chapter 184, passed April 12, provided for the licensing and government of pilots by way of Sandy Hook.

February 11. To the Assembly:

"Some delay, as I have heretofore stated, attended the selection of persons to execute the important measure contemplated by the act passed at the last session of the Legislature, 'to provide for a geological survey of the State.' The appointments were not all made till the month of July, and none of them at so early a period as to afford the persons selected an opportunity of employing the entire season in the work. The last year's operations do not, therefore, exhibit so much progress in the execution of the survey as may be expected in subsequent years. The survey was ordered to be made under the direction of the Governor. The plan for executing it submitted to the last Legislature, in the able report of the Secretary of State on this subject, has been generally pursued. So far as regards the botanical and zoological departments, the suggestions of the report have been adopted with but a slight modification. The execution of the botanical branch of the survey has been committed to Dr. John Torrey. I have not appointed a draughtsman for this part of the work, but authorized Dr. Torrey to procure the drawings for this department on the most favorable terms as to compensation. It is understood that the expenses for them will not exceed $400 in any year; and it will probably be somewhat less than that sum.

Dr. James E. De Kay has been appointed to take charge of the zoological department of the work. It is expected that the expenses for drawings in this department will be more than in any other, and the zoologist is authorized to expend a sum not exceeding the estimate in the Secretary's report, $800 per annum for that purpose.

The expectations in relation to the usefulness of the geological survey of the State, rest in a considerable degree upon the disclosure of our mineral wealth and resources, and I judged it of the first importance to carry the re-

searches in this respect to the utmost extent. The beneficial objects of the survey would not be fully answered by the mere discovery of the different kinds of ores and minerals existing within our territory. It was necessary that their qualities and ingredients should be accurately ascertained by a minute and scientific analysis. In relation to agricultural improvements, it was also important that more should be done than to collect specimens of our various soils. In directing the execution of the work, I thought it incumbent on me to provide for a full and accurate chemical analysis of these soils. To accomplish these objects in the best manner, I deemed it necessary to appoint a mineralogist, and assign to him the duty of examining the localities of the several ores found in this State, and of analyzing them, together with the soils and mineral waters of the State. Dr. Lewis C. Beck was selected for this purpose. I have more particularly called your attention to this arrangement, and succinctly alluded to some of the inducements for making it, because the appointment of a person to execute the mineralogical and chemical department of the survey was not suggested in the report of the Secretary of State. The propriety of this arrangement will, I think, be rendered more manifest by an examination of the report of the mineralogist now transmitted to the Legislature, together with those of the other persons engaged in the survey. Some expenses to a small amount attending the process of conducting these analyses, I have considered it proper to allow, and though I declined to appoint an assistant for the mineralogist in his explorations, I have paid some charges for the travelling expenses of one whom he engaged to accompany him.

It will be recollected that the plan submitted to the Legislature divided the State into four geological districts, and proposed to assign to each two geologists and a

draughtsman. The annual compensation suggested was $1,500 for each geologist, and $800 for the draughtsman. In this respect I have modified this plan, and thereby made considerable reduction in the expense, without, as I hope, diminishing the chance of securing a proper survey of the State. I have appointed only one geologist and an assistant for a district. I have stipulated to allow, and for the services performed have allowed, to the geologist a compensation at the rate of $1,500 per annum, and to the assistant $800. It was believed that a draughtsman for each district would not be required, or rather that the services to be performed by him might be executed by the geologist and the assistant. It was therefore agreed that for executing the principal drawings, and packing the specimens, and for the expenses of concentrating them at convenient places for transporting them to Albany, an additional compensation of $300 should be paid to each geologist. A similar allowance was also made to the mineralogist, zoologist and botanist, in addition to their salary of $1,500 per annum. As the drawings for the botanical and zoological departments required much more labor and skill, those having the charge of these two departments were allowed to incur the expenditures before specified for the services of draughtsmen.

As some of the persons employed in the survey were connected with literary and scientific institutions, and were not willing to dissolve their connections with them, and as their engagements were not of such a character as to prevent them from completing the part of the survey assigned to them within the time contemplated by the law authorizing it, they were employed at a less salary than that allowed to those who had no such engagements. Three of the persons thus employed, viz. Dr. Torrey, Dr. Beck and Prof. Emmons, receive only $1,200 annually; the others, viz. Dr. De Kay, Mr. Mather, Mr. Conrad and Mr. Vanuxem, are

allowed a full salary of $1,500. Each assistant has received a compensation at the rate of $800 per annum.

If the suggestions in the report laid before the last Legislature, in relation to the persons to be employed and their compensation, had been pursued, the amount of expenditures for each geological district would have been $3,800; but by the modifications that have been adopted, the annual expenditure has been reduced to $2,600. The reduction from the estimate is $4,800 each year in the four districts; but the mineralogical department, which was not contemplated by the report, will involve an expenditure of from fifteen to eighteen hundred dollars per annum which was not embraced in the estimate submitted to the Legislature. It may become necessary, before the completion of the work, to employ a skilful draughtsman, to execute some of the more important and difficult drawings in relation to the geological department.

Many scientific gentlemen were not only willing but desirous to engage in the survey, as it was an enterprise to be executed under the patronage of the State; yet I believe they all considered that the highest compensation which I felt authorized to allow them was inadequate to the services to be rendered; and from information I have received, I am induced to think it is less than other States have paid for similar services. The persons employed must be from five to seven months in each year engaged in explorations, and it was anticipated that their personal expenses (no part of which was defrayed by the State) would be considerable during this period; but these expenses thus far have exceeded their expectations, and they have united in an application for an increase of their compensation. I have deemed it proper to present this subject to the consideration of the Legislature for the purpose of receiving its direction thereon.

In order to supply the literary institutions of the State with specimens, as the law provides, the Secretary of State

has directed eight suits of them to be procured. Many of these specimens, and among them some of the most interesting character, are to be taken from places to which the approach by ordinary means of conveyance is impracticable. To procure and prepare this number of suits, and bring them to places from whence they can be transported by the common methods, requires much manual labor. It has been suggested to me, that the employment of a common laborer, or packman, in each district, for this purpose and some others, would greatly facilitate the execution of the survey, by relieving the geologists from the necessity of devoting their time and attention to objects no way demanding scientific acquirements. I have been in this respect, as well as all others, unwilling to adopt any arrangement which will be likely to increase the expenses beyond the estimate presented to the Legislature, and shall not do so without an assurance that it will receive its approbation.

It was in my opinion of great importance to the main objects of the work, that those who were engaged in it should confer together, not only to receive each other's suggestions as to the best methods of prosecuting their labors, but to adopt some uniform plans for their proceedings. I also desired their advice as to the general directions to be given for their guidance. For this purpose, they were convened in this city in November last. Among the recommendations presented to me by the board, was that of selecting a proper person to be employed exclusively on that part of the work which relates to *fossil remains*. As they assigned some of the reasons which induced them to adopt this recommendation, I take the liberty of presenting their views on this subject to the Legislature.

'At the late session of the geologists, the board deemed it expedient to recommend that a palaeontologist be appointed, in connection with the geological survey of the

State. There are several reasons that influenced them in their decision. Similar fossils are found in each of the geological districts; each geologist, therefore, is obliged to pursue those researches in fossil remains, that would, by the proposed arrangement, fall upon one individual, who would devote his whole attention to it, and thus do better than those who should attend to it less. Such an arrangement has already been made in the department of mineralogy, and this science is as intimately connected with geology, as fossil remains can be. All the branches of natural history, and many of the other sciences, cluster around geology, and lend to it and each other a mutual support. No man can make great advances in all the branches of geology; the proper course to be pursued, is for each individual to become acquainted with the great outlines of the subject, and then devote his attention to some particular branch of inquiry. It is by such a division of labor, that geology has advanced so rapidly within a few years. Physical geology and palaeontology are distinct branches of inquiry. The palaeontologist must necessarily be minutely familiar with the various branches of natural history, to distinguish the minute shades of difference in the species of fossils, and he must consult many authors to know what has been described and figured by others. The geologist must have the results of such labors, before he can draw definite conclusions on some points of geology. The board fully concur in the opinion, that this division of labor will facilitate the perfection of the work, by enabling each individual to devote more attention to this specific branch of inquiry. The increase of expense will be comparatively trifling; and to diminish this, the palaeontologist, who is recommended by the board, will make all the drawings of fossil remains, and thus save an annual expense of at least $500.'

This recommendation of the persons employed in the survey, is submitted to the Legislature, for the purpose of receiving their direction as to the propriety of its adoption.

The expenditure upon the survey has amounted to $7,769.74. This sum has been principally expended in paying the salaries of the persons employed in the work, at the rate of compensation before specified. The remainder of it has been disbursed for incidental expenses. The vouchers for the payments have been rendered to the Comptroller, and filed in his office.

Accompanying this communication, I transmit:

I. The report of Dr. John Torrey, who has charge of the botanical department of the survey.

II. The report of Dr. James E. De Kay, who has charge of the zoological department.

III. The report of Dr. Lewis C. Beck, who has charge of the mineralogical and chemical department.

IV. The report of William W. Mather, geologist of the first district.

V. The report of Prof. E. Emmons, geologist of the second district.

VI. The report of T. A. Conrad, geologist of the third district.

VII. The report of Lardner Vannuxem, geologist of the fourth district.

It is proper to remark, that some modification has already been made in the districts into which the State was divided, in the report of the Secretary of State, and that some further changes in this respect have been suggested, and will probably be adopted.

All which is respectfully submitted,

W. L. MARCY."

Albany, 10th February, 1837.

February 16. To the Senate: Transmitting the following resolutions adopted by the Legislature of Vermont in November, 1836:

"*Resolved,* by the General Assembly of the State of Vermont, That neither Congress nor the State governments have any constitutional right to abridge the free expression of opinions, or the transmission of them through the public mail.[e]

Resolved, That Congress do possess the power to abolish slavery and the slave trade in the District of Columbia."[f]

March 20. To the Legislature:

"I have received information that the Hon. Joseph C. Yates, late Governor of this State, died, at his residence in the city of Schenectady, yesterday afternoon. Considering the public services he has rendered the State, and the important official stations he has occupied, I have deemed it proper to communicate this mournful intelligence to the Legislature. In compliance with the request of the relatives of the deceased, I respectfully invite the members of the Legislature to attend his funeral to-morrow, at two o'clock in the afternoon, in the city of Schenectady.

W. L. MARCY."

Albany, March 20, 1837.

The next day the Legislature adopted concurrent resolutions on the death of former judge and Governor Yates, and appointed a committee of two senators and three members of assembly to attend his funeral.

May 16. To the Senate:

Memorandum of approval on a bill entitled "An act suspending for a limited time certain provisions of law, and for other purposes." [See note 10.]

"The main provisions of the bill I consider of the highest importance to the community at large in this crisis,

[e] U. S. Const. 1st Am.

[f] U. S. Const. art. 1, § 8, clause 17.

but that provision which requires the banks to receive in payment of debts due to them the bills or notes of other banks, against which an injunction has not been issued, appears to me to be unwise, and will, I apprehend, defeat to a very great extent, the principal objects contemplated by the bill. By the operation of this provision, the banks will be unable to collect the balances against each other. One bank can pay its debts to another in its own bills, as well as in the bills of any other bank. It is scarcely necessary that I should dwell upon the consequences of such a provision. It will I fear contribute to the depreciation of the circulating medium, and delay the period of resuming specie payments. Those banks which make efforts to put themselves in a condition to do so, will be prevented from accomplishing this very desirable object by their inability to collect the balances due them by other banks. It is believed that the return of the bill now before me, almost at the hour of adjournment, would necessarily prevent any action upon the whole subject, and involve the speedy forfeiture of all the bank charters in the State. To prevent such a disastrous result, I have approved of the bill, but with the greatest reluctance, on account of the provision to which I have alluded. I yet cherish the hope that some act will be passed, or provision made, to modify this clause of the bill under consideration, and leave the banks with full power to enforce against each other the payments of the balances which may accrue in consequence of being obliged to take each others' bills from individual debtors."

May 16. The Legislature adjourned without day.

WILLIAM L. MARCY, Governor.

ANNUAL MESSAGE.

FELLOW CITIZENS.—In laying before you, as it is my duty to do at this time, the condition of the State, and suggesting for your deliberation such subjects as appear to me to call for legislation, I shall direct your attention principally to our existing institutions, and particularly to such modifications and improvements of them as, in my judgment, the best interests of our constituents require.

The judiciary department of government, being that which is almost wholly relied on for the prompt, intelligent and efficient execution of the laws, may justly be regarded as first in point of importance. Whenever defects are found to exist in its organization, and especially if they be of such a character as to render it inadequate to the full accomplishment of the ends designed by its institution, it becomes the duty of the Legislature to apply the necessary corrective. The present condition of our judiciary establishment is an object of much solicitude, and of the deepest interest to our constituents; and as such, it demands, and, I trust, will receive, your early and sedulous attention.

The basis of our judicial system is laid in the Constitution, and unfortunately it is too narrow to admit of such an enlargement of the superstructure as the public exigencies now demand. For several years past the Legislature has attempted to modify the higher courts of the State, so as to render them adequate to the discharge of their onerous and constantly increasing duties. Several plans have been suggested for this purpose; but owing to the diversity of opinion which prevailed, no one has been adopted by the Legislature.

In order to bring this subject before you in a mature form, and with better hopes of effecting the necessary improvements, an act was passed at the last session, directing the appointment of three commissioners to digest and report a judicial and equity system, which should, in their opinion, be adequate to the public wants. The high character of the individuals selected for this duty, while it cannot fail to ensure for their recommendations a liberal confidence and respect, induces at the same time a hope, that the favorable and definitive action of the Legislature upon the subject will thus be secured. The commissioners have committed to me, for the purpose of being laid before you, the result of their labors. You will perceive by the documents herewith transmitted, that their plan contemplates considerable changes in the organization of the higher courts of the State. In relation to the court for the trial of impeachments and the correction of errors, it proposes that, when sitting for the purpose of correcting errors, it shall be composed of the Lieutenant-Governor, Chancellors, Justices of the Supreme Court, and the third and fourth classes of the Senators. It contemplates the division of the State into chancery districts, the appointment of four additional Chancellors, and an increase in the number of justices of the Supreme Court to five, with power in the Legislature to add still further to the number of Chancellors and Justices, whenever the public business shall require it. In order to bring the causes now pending in those courts and ready for a hearing, to a speedy close, the appointment of three commissioners for each court, to hear and determine them, is proposed. It is also recommended, that the several counties in the State, except the city and county of New York, be organized into convenient judicial districts, and that a presiding judge be appointed for each.

The commissioners also recommend an important change in the mode of taking testimony, and in the trial of causes

in the court of chancery, with various new provisions in relation to the practice and proceedings in the courts of law and equity. These new provisions are principally designed to diminish litigation, facilitate the progress of suits, and to prevent the unnecessary accumulation of expenses and costs. The views and recommendations of the commissioners, emanating as they do from gentlemen of judicial and professional eminence, intimately acquainted with the defects of the present system, and well qualified to determine what the future exigencies of the State will require, are commended to you as the result of enlightened reflection and well directed efforts to improve an important branch of our government, and as such, they are worthy of your best consideration.[1]

All classes of our constituents will look with much anxiety and high hopes to your proceedings on the subject of education. As the friends of civil liberty, and the possessors of the legislative power of a free people, we are commanded by the dictates of reason, and the voice of duty, to provide liberally and efficiently for popular instruction. An ignorant people would not long retain, if by chance they should acquire, civil liberty, and would never rightly appreciate its benefits. To the intelligence of those who have preceded us, are we mainly indebted for our free institutions, and all the blessings that attend them; and it is only upon the intelligence of those who must be the future guardians of these institutions, that we can confidently rest our hopes of having them perpetuated and improved. Popular education is, therefore, identified with civil liberty. We owe to both the devotion of our best faculties, and the wisest application of the means placed at our disposal for sustaining and promoting them.

[1] Chapter 258, passed April 18, authorized a trial by jury in certain cases in the court of chancery, and in other cases required testimony to be given orally except where a witness resided more than one hundred miles from the place of trial, or was unable to attend, or was a non-resident. The report of the commission was considered in both houses, but no plan of judicial reform was adopted.

In anticipation of the income to be derived from the moneys belonging to the United States, deposited with this State, a recommendation was submitted to the last Legislature to apply it exclusively to the purposes of education. This income was then estimated at $300,000 annually, during the time the deposit should remain with the State. The plan proposed for the appropriation of this sum was, to increase the annual distribution to the common schools to twice the present sum, thereby making it $220,000; to devote a liberal portion of it to the academies, in such a manner as not only to increase the amount annually distributed to them, but to augment the Literature Fund, and to add the remainder to the capital of the Common School Fund. The general proposition of applying this income to the cause of education, appears to have been coincident with public opinion, and I do not doubt that it will receive your sanction. There was, however, some diversity of opinion in relation to confining the application of it exclusively to the objects before enumerated. Claims to a share of it were urged in behalf of our colleges, particularly such among them as have not participated at all, or but slightly, in the bounty of the State. These higher institutions of learning are a part of our system of education, and their influence upon those below them in grade, but of more general interest and extensive usefulness, certainly entitle them to your fostering care. Wishing to be considered as repeating to you in substance the recommendations on this subject submitted to your immediate predecessors, I respectfully refer you to my last annual message for the reasons which still induce me to urge their adoption. The last instalment of the deposit money having been deferred, the income will be one-fourth less than the estimated amount. Though I should regret to see the least departure from the generally approved suggestion of appropriating this income exclusively to the purposes of education, yet it is not improbable that some useful modifications may be made in

the details of the plan. There are, undoubtedly, other objects connected directly with education, besides those already specified, to which pecuniary assistance might be extended with great advantage. Elementary instruction is only the first stage in the progress of education, and but little is accomplished if there be no advance beyond it. To make ample provision for conducting all the children in the State through this stage, should undoubtedly continue to be, as it hitherto has been, the first and main object of the Legislature; yet all that public sentiment demands and the public good requires, will not be achieved until needful facilities are furnished to a career of self-instruction. District libraries are well calculated to exert a beneficial influence in this respect. It is to be regretted that the opportunity offered to the school districts for establishing them has not been embraced with a zeal commensurate to their importance. Few of the districts, compared with the whole number in the State, have manifested a willingness to levy the small sum authorized by law for the purpose of establishing them. In view of their unquestionable usefulness, I would respectfully recommend that some further measures be adopted for introducing them more generally into the districts. The law now authorizes the inhabitants of each district, at their option, to raise, the first year, twenty dollars for establishing a library, and ten dollars in each subsequent year for enlarging it. Two modes present themselves for advancing this laudable object. One is, to make the assessment of the tax compulsory; and the other to devote a small amount of the fund now at your disposal to each district which shall raise by taxation an equal amount for the establishment of a district library. I recommend to your favorable consideration the latter mode, under a belief that it would meet with more general approbation than a compulsory assessment, and enlist an interest in behalf of those establishments that will not only ensure the

ultimate introduction of them into the several school districts, but increase their usefulness.[2]

Our common school system still labors under embarrassments arising from an inadequate supply of well-qualified teachers. Our colleges and academies have heretofore been relied on to supply, to a considerable extent, this deficiency; but it has been quite evident for some time, that further provision ought to be made by legislative authority, to satisfy the public wants in this respect.

The departments for educating common school teachers erected under the patronage of the State in eight of the academies have been in operation about two years, and the last reports from them present favorable results. The number of students attending them is steadily increasing; they are resorted to as sources for supplying the demand for teachers, and the services of those instructed in them are on that account considered more valuable, and readily command a higher rate of compensation.

But no success that can attend those already established, will make them competent to supply in any considerable degree, the demand for teachers; it has, therefore, been proposed to increase the number of such departments in each senate district of the State, by devoting to that purpose a portion of the income to be derived from the deposit of the public moneys. It is well worthy of your consideration, whether still better results might not be obtained by county normal schools, established and maintained on principles analogous to those on which our system of common schools is founded. If the people were fully sensible how much the usefulness of our common schools would be increased by being generally furnished with competent instructors, it is presumed they would cheerfully contribute the means required to secure this advantage. Though there

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2 Chapter 237, passed April 17, apportioned the income of the United States deposit fund for various educational purposes, including common schools, colleges, the literature fund and district libraries.

are conceded difficulties in the way of procuring an adequate supply of these instructors, yet the cause of education is so deeply interested in having it done to the utmost practicable extent, that you will doubtless regard it as an object every way deserving of your consideration.[3]

The whole number of organized school districts in the State on the 31st of December, 1836, was ten thousand three hundred and forty-five, from nine thousand seven hundred and eighteen of which reports were made to the commissioners of the common schools, and by the latter to the Superintendent. The number of children between five and sixteen years of age residing on that day in the districts which have reported, was five hundred and thirty-six thousand eight hundred and eighty-two, and the whole number of all ages instructed during the year 1836, was five hundred and twenty-four thousand one hundred and eighty-eight.

The amount of public money distributed to the districts during the year by the commissioners of common schools, (including $100,000 derived from the Common School Fund, and $19,332.51 from local and town funds,) was $335,895.10. This amount, together with the sum of $436,346.46 paid by the inhabitants of the districts, has been applied to the payment of the wages of teachers, making an aggregate of $772,241.56 expended for that purpose. Of this amount, however, a few thousand dollars were appropriated in the city of New York to repairing and finishing school houses.

The average period, during which schools were kept in the year 1836 in the districts, from which reports have been received, was seven months.

The number of academies subject to the visitation of the Regents of the University of this State, is now larger than it has been at any time heretofore. There were more than six thousand students instructed in those that made re-

[3] By chapter 237, an academy which received $700 from the literature fund was required to maintain a department for the instruction of teachers.

turns to the Regents last year. Of these about four thousand five hundred were classical students, and such as were devoting their attention to the higher branches of English education. It appears by the returns that the number of students attending the academies is increasing, and exceed last year that of any former period.

The amount of permanent capital invested in lots and buildings, in libraries and philosophical apparatus for the academies that reported to the Regents last year, was nearly $700,000; and the amount paid for salaries and compensation of teachers exceeded $93,000.

For several years past the nature and character of our currency, and, as connected with it, our banking institutions and credit system, have occupied a large space in the executive messages to the Legislature. I still entertain the opinions therein expressed, slightly modified by subsequent reflection and experience; and I should not, on this occasion, revert to these subjects, were it not for the new interest that recent events have given to them.

I hold it to be the imperative duty of the Legislature to guard the public against the evils of a spurious or vitiated currency. Ours has hitherto been composed mostly of the paper issues of State banks. Such institutions having been very generally regarded not only as useful but as indispensable to our prosperity, it was the object of past legislation to prevent the abuses incident to them, and to increase their usefulness. The law creating the safety fund is the fruit of this wise policy. Its provisions are admirably calculated to counteract the perverse tendencies of self interest in the management of banks, to check their excesses, and sustain a sound circulating medium. This law has hitherto received, as it justly deserved, the general approbation of the people, and I trust no serious intention is anywhere entertained of withdrawing from our banks its salutary influence and supervision.

While the legislature has been engaged in giving to these institutions the attributes of permanency and usefulness, an increasing unfriendliness has been exhibited towards them, principally on account of their exclusive privileges. Monopolies are undoubtedly incompatible with that equality of civil rights, which it is the great object of a free government to secure to all its citizens. Although the banks of this State are not strictly monopolies, yet they possess privileges withheld from individuals, and in consequence thereof have hitherto shared, and will probably continue to share, in the odiousness with which monopolies are justly regarded. To obviate this objection, it is desirable to discontinue the present mode of granting charters, and to open the business of banking to a full and free competition, under such general restrictions and regulations as are necessary to ensure to the public at large a sound currency. This can be done, either by passing a general banking law, or by an entire repeal of the restraining act. Doubts have been entertained as to the constitutional competency of the Legislature to pass a General Banking law, conferring corporate powers. Without entering into the argument on this question, I will only say, that I am inclined to the opinion that the Legislature have the power to pass such a law; but the spirit of the Constitution requires that it should be passed as a two-thirds bill.[a] It is proper that I should also say, that this opinion is entertained with much diffidence, and is not expressed without duly considering the respectful deference justly due to the high authority by which it is opposed. If, however, you should conclude that the constitution interposes an insurmountable obstacle to the passage of such an act, then it is suggested that you should regulate and limit, by a general law, partnerships which may be formed to conduct the business of banking, in such a manner as to secure to

[a] Const. 1821, art. 7, § 9.

them the essential advantages now conferred by special charters, and subject them to such restrictions and regulations as the public good may require.[4]

In recommending to the last Legislature a repeal of the restraining law, I felt it to be my duty to urge them to retain that part of it which prohibits the issue of notes or other evidences of debt to be put in circulation as money. The objections I then entertained to an unqualified repeal still have great force with me. I fear the injurious consequences to our currency that would result from granting to individuals and associations the unrestrained license to issue paper, and put it into common use as a circulating medium; but if this permission could be made to depend on an ample fund to be provided for the redemption of the paper which might be put in circulation — if the issues could be graduated by the amount of this fund; and if it could be certainly and immediately available whenever required for the purpose of redemption, the objections to an unqualified repeal of the restraining law would be removed.

It is now more than a year since we began to feel the effects of a pecuniary pressure unprecedented in extent and severity. Though timely warnings were given of its approach, they were not heeded, and the causes that conspired to produce it were left to operate with undiminished force. Its intensity increased with its progress, and it has at length pervaded all sections of the country, and all interests have felt its withering power.

Upon this State, containing the great commercial emporium of the nation, the center of domestic as well as foreign trade and of the monetary transactions of the Union, it fell with crushing weight.

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4 A free banking law, chapter 260, was passed April 18. This act was sustained in Gifford v. Livingston (1845), 2 Denio, 380, overruling De Bow v. People, (1845) 1 Denio, 9; Sherman v. Smith, (1861) 1 Black, 587, affirming Re Gibson, (1860) 21 N. Y. 9.

A restless spirit of adventure and daring enterprise, is a prominent characteristic of the American people. Under its impulse, their conduct, for some time previous to our present difficulties, tended to over-action in all branches of business. With scarcely substantial capital enough in the country, aided by the prudent use of credits, to wield our ordinary business concerns, a greatly increased demand for it was created by all kinds of over-trading, by extravagant speculations, and enormous investments in unproductive property. Our credit system was resorted to in this emergency to sustain this over-action in trade, and to carry out these enterprises for the sudden acquisition of wealth; in this manner it became burdened, oppressed, and was finally overborne.

The open credits which it is now known were extended by certain houses in Europe to merchants and bankers in this country, had a powerful and pernicious agency in causing our present embarrassments. The facilities thus liberally given on the one side, and most improvidently used on the other, led to an excessive importation of foreign goods, and the consequent accumulation of a very large foreign debt, which the avails of our exports did not furnish the means of paying. Over-trading at home is the almost inevitable effect of excessive importations from abroad. The same fruitful source of evils has also produced what was anticipated as a blessing, but has in fact proven to be a public calamity — the accumulation of a large surplus revenue. From the organization of the federal government down to the present pecuniary crisis, its funds have been deposited in banking institutions, and in this situation have contributed to increase their ability to accommodate their customers. While the nation owed a public debt, and the surplus of its revenues was rigidly applied to its reduction, this mode of using the public money had but a slight effect upon the ordinary currents

of business; but after the debt was extinguished, the accumulations of the surplus revenue were immediately and wholly turned into the channels of trade, and in this manner a new impulse was given to the prevailing tendency to overtrading and reckless speculation. The public domain was seized on with the greatest avidity; the immense sums received at the land offices were poured into the national treasury, and a fearful energy was thereby added to one of the many causes which co-operated to reduce the business of the country to a deplorable condition.

Looking back to the period immediately preceding the present revulsion, and carefully examining it with particular reference to the views and feelings that prevailed here and elsewhere, it would seem that a strange delusion had spread far and wide, filling the minds of many with extravagant hopes, and leading them on to the wildest adventures. It was scarcely reasonable to expect that this delusion would long continue, or that it could suddenly pass off without producing a disastrous change in our business transactions. The course pursued by the general government, to arrest the enormous speculations in the public lands, had doubtless some agency in accelerating the anticipated change; but to the suddenness and violence with which it was brought about by other causes, are to be ascribed the calamitous consequences that have attended it. The lavish pecuniary accommodations given to our citizens in Europe, were unexpectedly withheld; the payment of an enormous debt due from our merchants, was urgently demanded; the prices of our staple products having declined, and the balance of trade being against us, the precious metals were required for exportation. This demand pressed heavily on the banks, and, as a means of relief, they were compelled to reduce the amount of their discounts. The commercial community, thus deprived of their usual accommodations, while yet enfeebled in their

resources by heavy losses at the destructive fire in New York, were unable to sustain themselves; and consequently a more general suspension of payments ensued than had hitherto happened in this or perhaps any other country.

Notwithstanding the embarrassments of their customers, it is probable the banks would have sustained themselves in this trying emergency, had not the difficulties in which they were involved been greatly aggravated by the measures rendered necessary to execute the deposit law. The revenue collected at the port of New York, amounting to several millions, had been deposited in the banks of that city, and by them loaned to the business community. In the midst of this unexampled pressure, these banks were obliged to withdraw, for the purpose of distribution, a large amount from the use to which it had been applied. By this operation, the crisis was greatly accelerated; confidence became daily more and more impaired, and was shortly superseded by a general distrust; a panic ensued, and extended itself to bill-holders and individual depositors; a run was commenced upon the banks in the city of New York, and they suspended payments in specie. The same causes that led to this catastrophe in that city had been operating elsewhere, and produced a similar result throughout the whole country.

This event threw our monetary affairs into the utmost disorder. By the charters of the banks of this State a suspension of specie payments worked the forfeiture of their corporate powers; in a few instances immediately; in most cases after a suspension of ten days; and in all, after a suspension of three months. As the necessity which led to the suspension, would, in all probability, have prevented a resumption in time to escape the penalty of forfeiture, the banking institutions of this State must have all ceased in the space of ninety days to exercise their corporate functions, without the timely interposition of the Legislature. In case their charters had become forfeited

their affairs would, in the ordinary course of proceedings, have passed into the custody of law officers for the purpose of being wound up.

I shall not detain you by attempting to contrast the present condition of the people of this State, with what I think it would have been without the suspension law. I am impressed with a belief that the object, as well as the particular provisions of this law, have been and still are much misunderstood. It was not the only, nor was it the chief design of the suspension act to subserve the interest of the banks. Other interests were deeply involved in the measure, and had a controlling influence in procuring its adoption.

At the time payments in specie were suspended by the banks of this State, there was due to them a debt of about seventy-five millions of dollars; and if, by the forfeiture of their charters, it had become necessary suddenly to close their concerns and to wring this enormous amount by prompt, and in many cases forced collections, from their debtors, most of them would have been involved in irretrievable ruin. Nor would the disastrous consequences have ended with the immediate debtors of the banks; it would have extended to debtors of all descriptions — to men employed in the manufacturing and mechanical branches of business, as well as to merchants and traders; to those who depend upon their daily labor for their daily bread, not less than to those who use bank accommodations in transacting their ordinary business. Such a course of proceeding, which without the suspension law would seem to have been unavoidable, would have made a ruinous change in the relative value of property and money, multiplied litigation, and led to a fatal sacrifice of the means — and under other circumstances — the ample means relied on by debtors to relieve themselves from the burden of their engagements. The suspension act was based on no such narrow policy as favoritism to the banks; it was de-

signed for the common good, and has eminently subserved that purpose. But its provisions have not been less misapprehended than its main design. The belief still prevails to some extent, that this law legalized the suspension of specie payments, and took from bill-holders the right to enforce against the banks a demand for specie. This belief is founded in error. The law only suspends such of the penalties incurred by the non-payment of specie as worked a forfeiture of their charters; but the obligation imposed on them to redeem their bills on demand, in gold and silver, was not annulled or impaired by the act. The right to resort to courts of law to compel payment in specie was not taken away, nor were the proceedings against them so modified as to place them in a better condition when prosecuted than that of other defendants, except as to the recovery of costs in suits for sums less than fifty dollars, and even in this respect there was no difference between them, and individuals when sued in courts of record. If this law had created as many erroneously believed, an invidious distinction between banks and individuals, by shielding these institutions from prosecutions by their creditors, and leaving to them the unimpaired right to harass their debtors, it would have been obnoxious to the severest animadversion; but it contains no such objectionable feature.

It should not be forgotten that this law imposes a very salutary restriction upon the banks, by which the maximum of issues allowed by law is reduced more than forty-five millions of dollars; and it also obliges them, during the period of suspension, to receive in payment of debts the notes of each other at their par value. Admitting the correctness of the views here taken of the general design and effects of the suspension law, it must, I think, be conceded that the measure was demanded by the peculiar emergency; and that it could not have been withheld, without spreading bankruptcy and ruin more extensively

through the commercial community, and greatly aggravating the public distress.

There was undoubtedly some reason to apprehend that the banks, after being released from the penalties incurred by failing to redeem their bills, might be tempted to an excessive issue of their paper, and that the currency would thereby become greatly depreciated; but it is gratifying to find that such has not been their course. They have evinced a commendable desire to sustain the currency in a sound condition, and to prepare for an early resumption of specie payments. With this view they have steadily, and as rapidly perhaps as the public good required, contracted their issues. Their circulation, including therein the amount of each other's paper held by them, has been reduced, within the last year, about nine millions of dollars. Deducting the bills thus held from the amount of their issues it appears that their actual circulation on the first of December last did not much exceed $7,500,000, and their specie was then $3,482,893. Although their paper fell, shortly after the suspension, more than ten per cent below specie, it has been improving in value for several months past, and is now within three and an half per cent of that standard. Comparing the condition of the banks on the first of June — the time to which the first statement of their concerns after the suspension relates — with the exhibit of their condition on the first of December, it appears that within these two periods — a space of only six months — their discounts have decreased $9,581,794, and their specie has increased $680,307. They have also paid within that period nearly six millions of dollars to the Treasurers of the State and the United States. The total amount of debt due from them to the General Government, which on the first of January last was $7,883,039, is now reduced to less than $200,000.

The general suspension of specie payments by the banks, is justly regarded as a serious public calamity. During

its continuance, disorder will inevitably reign through all branches of business. A resumption must precede and introduce a healthy condition of things, and it should not be delayed beyond the period prescribed by a stern necessity. The penalties of forfeiture are withheld by the suspension law for only one year, which it was believed would afford the banks ample time to put themselves in a condition to resume. Some have already resumed, others are in a condition to do so, and I do not entertain a doubt of the resumption by all within the period during which the penalties of forfeiture have been suspended. If the banks of other States, by reason of their inability cannot, or for any other cause will not, generally co-operate with ours in this important measure, I trust there will be no hesitancy on the part of any of our institutions to enter promptly upon the course of conduct demanded of them by good faith to the public, and a due respect for their own character. The necessity of the case, and a regard to the public good, called the suspension law into being for a limited period. When this necessity shall have ceased, as it unquestionably will before that period expires, the public voice will demand a return to specie payments. You will not therefore I trust entertain an application, if contrary to general expectation one should be made, to prolong the operation of this law. The pecuniary convulsion which has shaken the whole country, owing to causes already alluded to, fell with destructive violence upon our banks. That they so well sustained themselves under the shock, and have recovered from its effects more speedily than those in most other parts of the Union, may justly be ascribed to the excellence of our banking system, and to the well directed and persevering efforts of the managers of our banks to relieve the community from the evils of a disordered currency.

Serious difficulties will doubtless attend the resumption and maintenance of specie payments by our banks in advance of a corresponding movement in other States; and

it is therefore a matter of unfeigned regret that the bank convention lately assembled in the city of New York, did not fix upon and recommend an early period for a general resumption. It is hoped that the powerful considerations in favor of such a measure will yet prevail, and that the banks of this State will be sustained by the co-operation of the banking institutions throughout the Union; but if ours must encounter increased embarrassments resulting from a want of this general co-operation, they will I have no doubt be sustained in their course by a liberal degree of returning confidence, and by all the incidental aids which it will be the interest of the community to extend to them. The appeal to the banks not only in this State, but throughout the country, to resume, is in fact an appeal to them for relief from evils which are in part attributable to their own imprudent conduct, and it is therefore confidently hoped that it will not be ineffectual. At what time the banks shall return to the payment of specie, is not with them a question of expediency, but of duty; and this duty will indicate no other than the earliest practicable period.

The banks have failed, for a season at least, to redeem their bills on demand in gold and silver, as in good faith and by law they were bound to do. If this delinquency is the natural result of defects in their organization, it is your duty to consider what measures are to be adopted to remove them. I am, however, persuaded, that upon a full investigation of the causes which have led to the suspension, you will find that their defects have had less influence in producing that event, than their improvident management. In considering this subject, justice requires that the consequences resulting from the latter cause should not be permitted to mislead your judgment as to their general character, or their peculiar fitness to fulfill the purposes contemplated by their establishment. If the causes of our embarrassments have not been misapprehended, these institutions are not alone responsible for the evils inflicted

upon the country. They did not engender the passions which produced these evils, although they furnished the means for their gratification, and in this way gave them a wider range and a more destructive energy. It was, to say the least of it, unfortunate that when the commercial spirit was stimulated to the highest degree of over-action, and the rage for speculation was rioting in the wildest excesses, many millions of the public money were committed to the banks, with the full expectation that it would be loaned to the business community.

The causes which have exploded our system of credit, considered in their nature and combination, are truly extraordinary, and will not be likely to occur again. Some of them, however, are of a more common character; and against the evils that would attend their recurrence, it is the duty of the Legislature to interpose to the utmost of its power. The main source of our disorders was the misdirected efforts of individuals in their private pursuits. To lay the restraints of law on these, would be an open invasion of natural rights, it would be erecting new barriers to obstruct the career of enterprise, and making further encroachments upon the freedom of trade. Such a remedy would be much more mischievous than the apprehended evil. It would be destroying the very power of motion, to prevent its occasional irregular action.

The evils most to be dreaded from banks, are a too great expansion of their business, and an unsound currency. We have recently witnessed the one, and now suffer the effects of the other. The suspension act has perhaps done all that is required of the Legislature, to guard against undue expansions. It has reduced the aggregate amount of issues, allowed by the charters of the banks, several millions of dollars below the aggregate amount of their capitals. This reduction will operate as a salutary check upon expansions, and be an additional safeguard against a redundant circulation of their paper. But the best security for a sound

currency is a sufficient specie basis. In ordinary times, specie funds properly deposited, will answer the same purpose as the precious metals in the vaults of the banks; but it should be the object of legislation to compel banking institutions to put themselves in a condition to fulfill their duties to the public in trying emergencies. I therefore recommend that the banks should be required to keep in their actual possession, an amount of specie to be graduated by the amount of their respective capitals, or of their circulation and deposits. If this amount should be no more than fifteen per cent on their capitals, or twenty per cent upon their circulation and deposits, it would greatly exceed the quantity of specie usually possessed by the banks. If the specie of a bank should happen to be reduced at any time below the sum fixed by law, such bank should then be required to suspend discounts until it should have supplied the deficiency. Should this recommendation meet with your approval, great care should be taken to have the measure you may adopt to carry it into effect, executed in such a manner as not to delay or embarrass the banks in resuming specie payments. If our banks are obliged to precede those in other States in this measure, the difficulty of retaining their specie, or in supplying themselves with it again if it should be withdrawn, will be much greater than it would be in case of a simultaneous movement by all the banks throughout the country. Besides, on the return to specie payments, there will undoubtedly be a very considerable demand upon them for coin to supply the place now occupied by small bills, which by that event will be driven out of circulation. If they were required to furnish themselves within a short period with an unusual amount of specie, it might hazard the success of the more important measure of resumption.

If the view I have taken of the origin of the difficulties in which the country has been involved is correct, they are in a great degree attributable to the accumulation of a large

surplus revenue by the United States and the use of it by the banks. It is the duty of Congress to guard against evils from this source, and it is gratifying to perceive that the President of the United States has promptly directed their attention to the subject, and suggested important changes in the existing mode of collecting, keeping, and disbursing the public moneys. There can be no question, that it is both the right and the duty of the General Government, to collect the public dues in the legal currency or its equivalent, and so to keep its funds that they will be safe while they remain with the government, and be at its command whenever wanted for disbursement. Fully concurring in the necessity of attaining these results, I am confident that the measures necessary to produce them, may be of such a character as will not affect injuriously the business concerns or the banking institutions of the country. One of these measures, and the most desirable among them, is the discontinuance of the use of the banks as the fiscal agents of the General government, or such a modification of their agency as will effectually prevent them from using, for any purpose, whatsoever, the public moneys that may be committed to them for safe keeping. This discontinuance or essential modification of their agency will, I have no doubt, prove mutually beneficial to all parties and to all interests. The subject is now before Congress, and if acted on by that body in the same conciliatory spirit with which it has been presented to them by the President, and with the same sincere desire he has evinced to arrive at a right conclusion, I have scarcely a doubt they will speedily dispose of it in such a manner as will be safe for the government, satisfactory to the great body of their constituents, and conducive to the general welfare.[5]

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[5] Chapter 51, passed February 28, repealed the act of 1835, prohibiting the circulation of small bills. Banks were required to redeem in specie all bills under $5. Banks could not issue bills under $2 after two years from the passage of the act, nor bills under $3 after July 1, 1840; nor under $5

The canals have been less productive the last year than during two or three preceding years. Being chiefly used as channels of trade, they must necessarily participate in its fluctuations. The amount of tolls collected on all the canals during the fiscal year which ended on the 30th of September, was $1,326,781. This is about $275,000 less than the amount received in the antecedent year. In consequence of the scanty crops of 1836, the tolls on downward freight were less than usual. Another cause of their diminution was the falling off in the quantity of merchandise sent into the interior of the State, and through it to the western States. If the increase of tolls on merchandise previous to the last year was to some extent the result of overtrading, the subsequent reduction must be regarded as a sure indication that the country is returning to a more healthy condition. Deducting the costs of repairs and collection of tolls on all the canals, which together amount to $608,907.73, the net proceeds of the revenue from tolls for the last year, is $717,803.24.

The income of the Erie and Champlain Canal Fund from all sources, including the interest on $3,006,546.43 — the sum set apart to pay the remainder of the debt contracted on account of these canals — is $1,426,071.78. Of this amount $632,881.20 was expended on the enlargement of the Erie Canal. The remainder was disbursed for repairs, collection of tolls, and in payment of interest, except $182,140.15, which remained in the hands of the Commissioners of the Canal Fund at the close of the fiscal year.

The amount of tolls collected on all the lateral canals, except the Chenango canal, is $41,203.54. This is $15,511 less than the collections of the preceding year. The deficiencies in the income of these canals to meet the expenses

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after January 1, 1841, nor bills between $5 and $10 at any time. No bank operating under the free banking law, chapter 260, could "at any time, for the space of twenty days, have on hand at its place of business less than 12½ per cent. in specie on the amount of the bills or notes in circulation as money."

of repairs, collection of tolls, and the payment of interest on the debt contracted in constructing them, is $114,637.43.

During the past year the Chenango canal, which opens a communication of ninety-seven miles in extent between the Erie canal at the city of Utica and the Susquehannah river at Binghamton, has been added to the number of important public works of internal improvement already completed and put in operation by this State. This work has presented the first occasion on which it has been necessary to construct reservoirs to ensure a sufficient supply of water. As the use of them for this purpose has heretofore been treated as an experiment — the effects of drainage and evaporation in this country not having been fully tested — it is gratifying to find that the experience of last year promises more favorable results than was anticipated.

The navigation on the Chenango canal commenced in May, only five months before the close of the fiscal year; owing to this circumstance, to the unfavorable season, and to the want of proper arrangements and conveniences for business, the sum collected for tolls is only $4,081.62. The expenditures on this canal during the whole year, for interest on the debt on account of it, for repairs, and for collection of tolls, amounts to $106,830.78. The total amount of deficits in the revenue on all the lateral canals to meet all expenses chargeable to them, is $217,386.59.

The unfinished works of internal improvement, including the enlargement of the Erie canal, will involve, according to the estimates that have been made, an expenditure of about $15,000,000. Some parts of the Genesee Valley, as well as of the Black River Canal, have been already put under contract, and I am informed by the Canal Commissioners that other portions of them will be let early in the next season. No very accurate conjecture can now be formed as to the period when these canals will be completed. The funds required for this purpose, to the ex-

tent authorized by law, have been raised, and the work on them will undoubtedly be pressed forward with energy.

The Commissioners are devoting all the means placed at their control to the enlargement of the Erie canal. I am informed that no new contracts on this work have been entered into during the last year, and that less has been done on those previously made than the Commissioners had reason to expect. In consequence of the failure of some of the contractors and the delays of others, it is to be apprehended that the aqueduct across the Genesee river at Rochester will not be finished until near the close of next year. An increased degree of solicitude for the early completion of this important part of the work is felt, on account of the decayed and insecure condition of the present aqueduct. The work on the Genesee Valley canal at Rochester has been urged forward, on account of the peculiar advantages which would result from its completion in case the present aqueduct should become unserviceable. If an interruption of the navigation should be caused by the failure of the old aqueduct before the new one is completed, this part of the Genesee Valley canal, if finished, will afford the means of passing the river and keeping up the business on the Erie canal.

The best interests of the State appeal to you with great earnestness to provide for the early completion of this important improvement. I am persuaded that a larger sum than the present appropriation might be advantageously expended, without causing interruption or delays to the transportation on this canal. In those seasons of the year when business is most active, considerable inconvenience has already been felt on account of the inadequacy of this canal, and this will soon become a serious evil by the rapid increase of agricultural products in the west, and of the quantity of merchandise required for consumption in that region. There can be no doubt that the channel of communication between the Atlantic cities and the fertile

regions of the west, through this State, is to say the least of it, as eligible as any other that has been or can be opened, and both duty and interest indicate the propriety of making it not only adequate to the public wants, but of making it so at the earliest practicable period. I respectfully commend this subject to your serious consideration, as one which not only connects itself with the welfare of this State, but with that of the extensive regions of the west.[6]

The receipts into the treasury for the year ending on the 30th of September, 1837, including a small balance of the preceding year, amounted to $6,452,481.44, and the payments out of it, to $4,921,928.90, leaving a balance at the close of the fiscal year of $1,530,552.54. This balance arises from the receipts of the portion of the surplus moneys of the United States allotted to this State under the deposit law. There is due from the General Fund, on which the expenses of the government are chargeable, to the specific funds, besides the above balance in the treasury, the sum of $323,527.40. The authority to borrow $400,000 annually from the surplus revenues of the Canal Fund, will enable the treasury to pay this amount. Including this balance, the debt chargeable on the General Fund is $1,520,418.55.

The first instalment of the debt created for the construction of the Erie and Champlain canals, amounting originally to about $3,500,000, was payable on the first of July last. A part of the surplus canal fund moneys has been applied to the redemption of this debt for several years past, in anticipation of the time stipulated for the payment thereof, so that the balance that remained on the first of July last was only $1,043,000. About $640,000 of this stock was surrendered during the fiscal year, for which the public creditors were paid in a medium equivalent to

[6] Chapter 269, passed April 18, "to provide for the more speedy enlargement of the Erie Canal," authorized a loan of $4,000,000 for this purpose.

specie, at an expense to the canal fund of $53,000. The particulars of this transaction will be presented to you in the annual report of the Commissioners of the Canal Fund. The measures adopted for the payment of this debt will fully sustain the credit of our public stocks. The wisdom of this course, considered with reference to what was due to the public creditors and to the character of the State, cannot, I think, be questioned. Notwithstanding public notice was given in this country and in England, where the holders of a large amount of this stock reside, that it would be paid on the first of July, and that interest would thereafter cease, the sum uncalled for on the 30th of September was nearly $400,000.

The second instalment of the Erie and Champlain canal debt is payable in 1845, and amounts to $2,215,737.50. The means for satisfying this debt are provided by the investment of the surplus canal funds, and it may, therefore in all financial arrangements be considered as paid.

There is an aggregate debt of $3,364,304 created for the construction of the lateral canals; and to this sum will be added about $2,800,000 for the construction of the Genesee Valley and Black River canals, making a total debt of $6,164,304, on account of the lateral canals. The revenues from these canals fall, as appears from the foregoing statements, very far short of the sum required for their maintenance and the payment of the interest on this debt. It is important that a system of finance should be adopted, which will at all times ensure the punctual payment of the accruing interest on the public debt, and ultimately extinguish the principal. My views on this subject were presented to the Legislature in the annual message of 1836, to which I take the liberty to direct your attention.

The productive capital of the Common School Fund is $1,916,647.68. Its income during the last fiscal year was $94,349.93. The annual apportionment to the common

schools is $110,000. Although the revenue of the present year falls considerably short of this sum, the surplus of the preceding year is more than sufficient to make up the deficiency.

The capital of the Literature Fund is $268,092.68, and produced a revenue for the last year of $13,016.10.

The capital of the Bank Fund is $649,818.45, and the revenue from it for the last year, was $28,508.61. There was paid from the capital of this fund during the year, the sum of $158,733, in redeeming the bills of five of the safety fund banks. With the exception of about $30,000, the sum thus advanced has been repaid with interest. Of the repayment of this balance, there is not the slightest reason for entertaining a doubt.

There has been deposited in the treasury of this State, under the act of Congress of 1836, "to regulate the deposit of the public money," $3,974,520.71, for which receipts have been given, pledging the faith of the State to repay the same whenever required by the United States government. This money has been loaned on mortgage through the agency of Commissioners of Loans of the several counties, pursuant to the act passed at the last session of the Legislature. The investment will produce an annual revenue of about $250,000.

The act for loaning the surplus moneys of the United States, authorized a distribution to the several counties of the whole sum apportioned to this State by the Secretary of the Treasury on the first of January, 1837, and, on the assumption that the whole amount would be received, required the Commissioners of Loans to take from borrowers mortgages for the whole sum allowed in each case, and to give to the mortgagors certificates for such portions of the mortgage moneys as were not paid at the time of executing the mortgages. The Commissioners commenced loaning in most counties when only one half of the money had been received by the State; and they paid to each bor-

rower one half of the sum apportioned to him, and gave a certificate for the residue, promising payment on the first of October, according to the requirement of the law. When it was rendered probable that the fourth instalment would be withheld from the State treasury, the Comptroller, in order to meet the demands which could come against the treasury for the payment of these certificates, made an arrangement to borrow $1,338,000 from the Erie and Champlain Canal Fund, at an interest of six per cent. The canal fund money which has been applied to this object, is a portion of the sum set apart for the redemption of the canal debt payable in 1845; it will not be necessary, therefore, to call in this part of the loan for six or seven years, although the mortgages do not in any case extend beyond five years, and in all cases the money is payable in two years after notice. The arrangement made by the Comptroller with the Commissioners of the Canal Fund, is for a temporary loan; I recommend, however, that a law be passed, declaring that one-fourth part of the amount of the mortgages taken by the Commissioners for loaning the surplus moneys of the United States, be an investment for the Erie and Champlain Canal Fund, that the same may continue on loan for six or seven years, and that one-fourth part of the interest received on the whole amount of the moneys loaned by the Commissioners in the several counties of the State, be paid annually to the Canal Fund.[7]

Our penitentiaries continue to fulfill the purposes for which they were established, in a highly satisfactory manner. The number of convicts in both establishments on the first of December last, was one thousand four hundred and seventy-two, being about ninety more than they contained at that date in the preceding year. The number committed to these prisons last year exceeded that in the

[7] By chapter 193, passed April 10, the loan commissioners were authorized to invest the proceeds of loans in canal stock.

previous year about one hundred and thirty. The inmates of both prisons have enjoyed an unusual degree of health, and have generally submitted without resistance to the regulations established for their orderly conduct.

The financial results of the two prisons, do not appear to be alike favorable. The earnings at the Mount Pleasant prison for the year ending the 30th of September, were $78,-181.24, and the expenses for general support $60,421.17. The sum of $11,105.45 has been paid from the earnings of this establishment for the transportation of convicts and the support of female prisoners at Bellevue. In addition to the labor from which the above amount has been realized, the convicts at this prison have performed work for the State in erecting a prison for female convicts, estimated at $6,000. During the year the agent of this prison has paid $10,000 into the treasury of the State. This, with the cash on hand, $8,563.07, and the several sums standing to the credit of this prison for work done for the State in furnishing materials for the new State Hall, makes its whole available surplus earnings $59,282.97. The female convicts sentenced to this prison have heretofore, for the want of proper conveniences, been kept at Bellevue, in the city of New York. Though the prison at Mount Pleasant designed for them is not yet completed, they have been removed thither, and furnished with suitable accommodations, and subjected to the established discipline of our State institutions.

The sum expended for the general support of the Auburn prison for the same period, amounted to $64,679.39, and the extraordinary expense incurred in building the exterior wall for this prison was $5,397.73. The total receipts from the avails of labor by the convicts and from other sources, was $46,469.65. By comparing the disbursements and receipts of this prison for the last year with those of the preceding one, it will be perceived that the expense has increased and the income diminished. The

principal cause of this additional expense, was the unusually high price of provisions; and the unfavorable condition of the times has diminished the earnings of the convicts. It is also proper to observe, that the inspectors commenced early in May last to erect a wall to enclose the new and enlarged yard of the prison, and from that time to the close of the season, the average number of convicts employed on that work was, by estimation, about eighty. This would account for considerable diminution in the earnings of the convicts. The value of the labor performed on this work is estimated at $10,000. It was anticipated that the law regulating the manner of employing convicts, and the kind of mechanical business to be conducted in the prisons, would reduce the productiveness of convict labor. Its effect in that respect begins to be perceived much more obviously at this than at the Mount Pleasant prison, in consequence of the various branches of business which had been introduced into it previous to the passage of that law.

The commissioners appointed under the act "to authorize the establishment of the New York State Lunatic Asylum," to select a suitable location for that institution, reported in the early part of last summer to the Governor, their opinion in favor of a site within the limits of the town, and immediately on the west line of the city of Utica. The place selected was deemed in all respects suitable to the purpose and the choice of the commissioners was approved. The premises, containing about one hundred and twenty-four acres, have been purchased. Commissioners for erecting appropriate buildings have also been appointed and have entered upon their duties. Deeming it highly important that a proper plan for such a building should be adopted, their attention has hitherto been directed to that object. It is presumed that the preparatory arrangements for erecting the buildings will be soon made, and the execution of the work commenced in the early part of the ensuing season.

The geological survey of the State has been prosecuted with diligence and success during the past season, and there is good reason to believe that the benefits resulting from it will be fully equal to the anticipations which induced the State to engage in this work. Some modifications in the mode of executing it have been made since my last communication to the Legislature on the subject. These, and an account of the disbursements for the past year, will hereafter be submitted to you, along with the annual reports required to be made by the several persons employed in the survey.

It is to be regretted that nothing has yet been done to improve the present organization of the militia. This might be effected in such a manner as to render the duties of the militia service less burdensome and expensive without impairing the efficiency or usefulness of the system. The power to make the desired modification is vested in Congress, and much has been done, but hitherto without success to induce that body to give the subject a favorable consideration.

The whole number of the militia of this State, as will appear by the annual report of the Adjutant General, which will soon be transmitted to you, is one hundred and eighty-four thousand eight hundred and ninety-two.

Information has been recently communicated to me that some of the field pieces at the west, belonging to this State, have been taken from the artillery companies which had the custody of them, and carried beyond our territorial limits. The Commissary General, pursuant to my directions, has gone to that part of the State to ascertain the truth of the reports, and to take the necessary measures to recover and secure the public property. I respectfully recommend that more ample provision than the present laws afford, should be made for the protection and safe keeping of this kind of property.[8]

[8] As to the unlawful seizure of military property see special message of March 5.

Having suggested such matters for legislation as seem to me to deserve your particular notice, I conclude this communication with an assurance of my ready and cheerful co-operation in the performance of the important duties which devolve upon us as the representatives of a free people in an interesting period of their affairs. With humble reliance on the continued good providence of the All wise Ruler of Nations, I trust that we may be led to results beneficial to all classes of our constituents, and conducive to the permanent well being of the State.

WILLIAM L. MARCY.

Albany, January 2, 1838.

SPECIAL MESSAGES.

January 2. To the Legislature:

"I received last evening, after my annual message was prepared, information of an occurrence which I hasten to communicate to you.

The territory of this State has been invaded, and some of our citizens murdered, by an armed force from the Province of Upper Canada.

By the documents accompanying this communication, it will be perceived that the steamboat Caroline, owned by one of our citizens, while lying at Schlosser on the Niagara river, within the limits of this State, on the night of the 29th of December last, was forcibly seized by a party of seventy or eighty armed men in boats, which came from, and returned to, the Canadian shore. The crew and other persons in this steamboat, amounting to thirty-three, were suddenly attacked at midnight after they had retired to repose, and probably more than one-third of them wantonly massacred. The boat was detached from the wharf to which it had been secured, set on fire, taken into the middle of the river, and by the force of the current carried over the Niagara Falls. Twelve of the persons who were on

board of it are missing, and there is ground to fear that they were killed by the invaders in their attack upon it, or perished in its descent over the cataract. Of those who escaped from the boat, one was killed on the wharf, and several others were wounded.

I am warranted in assuring you, that the authorities not only of this State, but of the United States, have felt an anxious solicitude to maintain the relations of peace and strict neutrality with the British provinces of Upper and Lower Canada at all times since the commencement of the civil disturbances therein, and have in all respects done what was incumbent upon them to do to sustain these relations. The occurrence to which I have alluded, is an outrage that has not been provoked by any act done, or duty neglected, by the Government of this State or of the Union. If it should appear that this boat was intended to be used for the purpose of keeping up an intercourse between this State and Navy Island, which is now held by an assemblage of persons in defiance of the Canadian government, this circumstance would furnish no justification for the hostile invasion of our territory and the destruction of the lives of our citizens.

The General Government is entrusted with the maintenance of our foreign relations, and will undoubtedly take the necessary steps to redress the wrong and sustain the honor of the country.

Though I have received no official information of the fact, I have good reason to believe that the local authorities of this State have taken prompt and efficient means, not only to protect our soil from further invasion, but to repress any retaliative measures of aggression which our citizens under the impulse of deeply excited and indignant feelings, might rashly resolve to adopt; and that the patriotic militia in the vicinity of the scene of the outrage, have obeyed with alacrity the call which has been made upon them for these purposes.

It will probably be necessary for this State to keep up a military force for the protection of our citizens and the maintenance of peace, until an opportunity is given to the General Government to interpose with its power. In that event, I apprehend that it will be necessary for you to provide by law for the payment and maintenance of such forces as the occasion may require.

I shall doubtless receive within a short time, official information of what the local authorities have done, and shall be better enabled to form an opinion of what will be necessary on the part of this State to preserve our rights and the public tranquillity. I shall then communicate further with you on the subject, and suggest such matters in relation to it as may require your consideration.

W. L. MARCY."

Albany, January 2, 1838.

January 8. To the Assembly: Transmitting the annual report of the Commissary General.

January 9. To the Assembly: Transmitting the annual report of the Adjutant General.

February 20. To the Assembly:

"I have the honor herewith to transmit to the Assembly, the annual reports required from the persons engaged in the geological survey of this State. By the law authorizing this important work, the direction as to the mode of executing it, is committed to the Governor. He communicated to the last Legislature the arrangements he had made in performance of the duty thus devolved on him. It was thought expedient by the Governor, that the persons engaged in this survey, should have an opportunity of consulting together, and making such suggestions to each other and to him, as to the manner of executing it, as would be likely to produce the best results.

On the invitation of the Governor, they assembled in November, 1836. In addition to the arrangements which had been made to carry into effect the views of the Legislature which authorized the survey, the board recommended that a person should be employed, to be denominated a Palaeontologist, whose exclusive duty it should be to execute that part of the work which related to *fossil remains*. This recommendation of the board, together with the reasons by which it was sustained, the Governor submitted to the Legislature at the last session, with a view to ascertain how far the suggestion was likely to meet with its approval. The resolutions of the Assembly, the branch of the Legislature to which the reports of the geologists, and the communication of the Governor accompanying them, were transmitted, left it to his discretion to adopt or reject the recommendation of the board. (See Assembly documents, No. 258.) Upon mature consideration of the subject, he concluded that this further division of the labors of the surveyors would facilitate the execution of the work, and make it more complete; he has therefore adopted the suggestions of the board in this respect.

Mr. Timothy A. Conrad, who had been previously employed as the geologist of the third district, was selected as a person peculiarly fitted for this part of the survey. James Hall, who was an assistant geologist, was appointed to the place made vacant by appointing Mr. Conrad, the Palaeontologist. The third and fourth districts have been reorganized since the last report to the Legislature, and Mr. Vanuxem assigned to the third, and Mr. Hall to the fourth.

It has also been deemed expedient to dispense with the assistant geologists. Those which had been previously employed have not been discharged, but no new appointments have been made to fill vacancies. There is now but one assistant engaged in the survey. An allowance, which if necessary may be equal to, but in no event is to exceed,

the compensation paid to an assistant, is made to each geologist who has not an assistant, to be applied to procure aid and assistance in executing his duties. The sum thus expended by the geologists, it is anticipated, will be in most instances less than the salary allowed to the assistants, and in this way some reduction in the expenses will be made, without diminishing the value of the services to be rendered to the State.

The rate of compensation allowed to the persons employed in this public work are nearly or quite the same as that reported to the Legislature at the last session, but the incidental expenses exceed the sum expended in the previous year. Particular care has been taken in adopting and carrying out the arrangements for the completion of this enterprise, to bring the annual expenditure within the sum specified in the report of the Secretary of State in 1836.

From the reports which I herewith send to you, and from other sources of information, I feel warranted in assuring you that the work is progressing with rapidity; that those employed by the State are executing it with scientific skill, and persevering industry; and that the results of their labors in developing our internal resources, and adding to the wealth of the State, will be quite equal to the high expectations which have been formed of the usefulness of this public enterprise.

Accompanying this communication, I transmit:

I. A letter from James E. De Kay, the zoologist, in relation to annual reports from the zoological and botanical departments.

II. Report of Lewis C. Beck, who has charge of the mineralogical and chemical department.

III. Report of T. A. Conrad, who has charge of the Palaeontological department.

IV. Report of W. W. Mather, geologist of the first district.

V. Report of E. Emmons, geologist of the second district.

VI. Report of L. Vanuxem, geologist of the third district.

VII. Report of James Hall, geologist of the fourth district.

W. L. MARCY."

Albany, February 20, 1838.

March 2. To the Assembly: Transmitting a preamble and resolutions adopted by the Legislature of Alabama recommending the favorable consideration of the overture on the part of the Republic of Texas for annexation to the United States.

March 5. To the Assembly:

"GENTLEMEN.—In compliance with the resolution passed by you on the 2d instant, requesting me to communicate such information as I may possess in relation to the unlawful seizure and removal of muskets, ordnance and other property of the State, from its arsenals, &c., I herewith transmit to you a letter (marked No. 1,) from Jason Fairbanks, Esquire, keeper of the State arsenal at Watertown. That arsenal was broken open, as this letter states, on the night of the 18th ultimo, by persons unknown, and about three hundred and thirty stand of arms, belonging to the people of this State, were taken from it and carried away. It also appears by a communication herewith transmitted, (marked No. 2,) from Nathan Follett, Esquire, that previous to the 25th of February, and probably about that time, the State arsenal at Batavia was also broken open, and some of the State property deposited therein (about two thousand pounds of powder and one hundred muskets,) was taken and carried away. I also herewith transmit to you two letters, (marked No. 3 and 4,) the one a

copy of a letter sent to Brig. Gen. J. E. Wool, of the U. S. Army, in command on the Northern frontier, by Augustus C. Hand, Esq., keeper of the State Arsenal at Elizabethtown; the other a communication from him to me, enclosing the said copy. By these letters, it appears that the State arsenal at Elizabethtown was broken open, and one thousand muskets with bayonets, twenty-six rifles, twenty pair of pistols, and a large quantity of knapsacks, belonging to the people of this State, were stolen and carried away, on the night of the twenty-fifth ultimo. It is proper to observe, that the State arsenals above mentioned, as well as one or two others, are not, nor were they designed to be, places of strength. They are merely depots for arms and munitions of war, and the location of them not far from the frontiers of the State was deemed judicious in reference to a very different state of things from that which now exists. Each of these arsenals has ever been without any guard, and has been hitherto left in the charge of a single individual, denominated a keeper, whose compensation is limited by law, to a sum not exceeding twenty-five dollars per annum. It was anticipated that there would be at all times and under all circumstances, a general disposition among our citizens in the neighborhood of these establishments, to defend them whenever they should be threatened with an attack or exposed to be pillaged; and, therefore, nothing more was deemed necessary in relation to their security, than to put them into the charge of a keeper.

Recent events, however, have shown that the security heretofore relied on is insufficient, and that the property of the State ought to be withdrawn from its exposed condition, or more ample means should be provided for its safe keeping. The object of establishing arsenals in the northern and western sections of the State and depositing in them arms, ammunition and other implements of war, was

undoubtedly to furnish the inhabitants on the frontiers with the means of defence, on sudden emergencies, in cases of danger from abroad, and for this purpose I think these establishments ought to be kept up. But I recommend that express authority should be given either to the Governor or the local, civil or military officers, to employ a competent guard to protect these arsenals and to secure the property of the State contained in them, whenever there is just cause to apprehend danger from any quarter whatsoever. Their defenceless condition, and the knowledge that there was no competent force to protect them, or proper officer vested with authority to call out such a force for that purpose, unless the movement assumed the shape of an insurrection, have probably had a tendency to invite the aggressions that have been committed on them.

In the latter part of December last, I received information, in some instances in the shape of reports, and in others in a more authentic form, that field-pieces belonging to the State, and entrusted to the artillery companies, had been forcibly taken away. I requested the Commissary General (he being the officer to whose custody the military property of the State is by law confided,) to repair to the section of the State where these lawless acts were alleged to have been committed. The annexed paper marked No. 5, is a copy of a letter addressed to some of the persons from whom I had received information on the subject; it discloses the object of the Commissary General in visiting the western part of the State. The residence of this officer being at New York, I shall not be able to obtain from him in detail such information as he collected on that occasion, relative to the objects embraced in your resolution, in season to transmit it with this communication.

From a letter dated at Buffalo, on the 7th of January last, the Commissary General expresses an opinion that about twenty field-pieces and two hundred muskets belong-

ing to the State, had at that time been seized and taken to Navy Island. (Extract of letter of Commissary General to Governor, marked No. 6.) It appears by the accompanying memorandum, dated 12th January, (marked No. 7) that he had then particular information in relation to the seizure and removal of twelve pieces of ordnance.

From recent movements on the northern frontier, apprehensions were entertained that the field pieces in the possession of the companies of artillery in the northern section of the State might be seized by those who are intent upon making an incursion into Canada; the annexed order, (marked No. 8) was issued for the purpose of preventing these field pieces from being unlawfully seized, and with a view to have them at command in case an emergency should happen in which they might be needed by the militia in the service of this State or the United States. Accompanying this communication, I send you copies of certain affidavits numbered 9, 10, 11, 12 and 13, all containing facts in relation to the seizure and removal of the ordnance and arms of this State.

From the foregoing statement, and the documents referred to, it clearly appears that within a very short time, three of the State Arsenals have been broken open and plundered; and since the beginning of December last, about twenty field pieces belonging to the State have been clandestinely or forcibly taken from the possession of military officers to whom in pursuance of law they had been entrusted. The persons who have committed these acts, and those knowing their objects who have assisted them, are guilty of crimes to which the laws have affixed the ignominious penalty of confinement in the State Prison.

There are several circumstances which conspire to render the conviction of these criminals a matter of great difficulty. It is quite evident that the number of persons who have in this manner incurred guilt and exposed themselves to punishment, is very considerable. It is not

reasonable to believe, that any of these lawless acts has been committed without the approbation and co-operation of several individuals. The criminals, and some of those who sympathize with them in feeling, it is natural to expect, will combine to counteract and, if practicable, defeat the measures which may be adopted to procure convictions. Not only the offenders, but the witnesses, whose attendance on the trials it may be necessary to obtain for the purpose of proving the offences, may be in different parts of the State, or of the United States. Among them, there are doubtless many who have no fixed place of residence, and it will require much diligence and attention on the part of the prosecuting officers, to trace them out and procure their attendance at the courts.

It has been very evident from the first out-break of the disturbances in the Canadas, that among our citizens there were very many who sympathized with those who had arrayed themselves against the government of these provinces;—there were a few who personally embarked in their cause, and more who in one way and another countenanced and comforted those engaged in it. I am persuaded, however, that the number of our citizens who, in the indulgence of their feelings, might have been carried beyond the strict line of duty to their own country, would have been comparatively few, had not the outrage at Schlosser been committed—and not only committed, but avowed as an authorized act by the officers and government of Upper Canada, and the persons who perpetrated it commended and rewarded by marks of public distinction. This lawless act on the part of the Canadian authorities, and the manner in which it has been justified and commended, has added vastly to the current of public sympathy among our citizens in behalf of those who are opposing the Canadian government. Under the impulse of the feelings which have been thus excited, many have been betrayed into acts inconsistent with the neutral relations of their country.

To this cause it is fair to ascribe a feeling somewhat diffused through the community, which may embarrass and obstruct the proceedings instituted on the part of the people of this State to bring to punishment those who have violated our laws in breaking open our arsenals and gun-houses, and stealing therefrom the property of the State. It is not to be disguised, that the tone of public sentiment in relation to these transactions, owing to the cause to which I have referred, is such, that the officers of justice cannot expect much voluntary aid in prosecuting the offenders.

In view of the circumstances alluded to, and others that will readily suggest themselves, I have thought that the prosecution of those who plundered the State of its property, if left to the several district attorneys of the counties, would not be likely to be so successful as it would be if entrusted to some person or persons particularly charged with conducting it, and having a general jurisdiction in each county where any of the said offences may have been committed. I, therefore, gave my decided approbation to the bill introduced a few days since by the chairman of that branch of the joint committee selected by your body, to which the Governor's special message of the 2d of January was referred. I still think, and I say it without the least disparagement to the county prosecuting attorneys, that without some such provision of law, I fear they will encounter many and formidable difficulties in these prosecutions, and not a few of the offenders may escape the punishment they have incurred by their depredations upon the property of the State.

I am not aware that any case has heretofore existed, where such an enactment as that now proposed was so necessary as in the one under consideration; none, in my view of it, where the number of offenders was so numerous and so widely dispersed; where it required so much preparation and labor to collect the testimony and procure the

attendance of witnesses; where so much resistance was to be dreaded from extensive combinations; and where so little assistance could be expected from public feeling.

In replying to that part of your resolution, which requests me to suggest such measures as in my judgment may be necessary, to prevent unlawful armed assemblages of the citizens of this State, it is proper, I presume, to consider it as having reference to the present movements on our northern and western frontier. There is no little difficulty in determining what a State can, as well as what it should do, in such a conjuncture. Those who are assembling on the frontier of this State for the purpose of invading Canada, are acting against their duty as citizens of the United States, and violating the laws of the United States. A State, strictly speaking, has no foreign relations, and consequently is not provided with laws regulating the conduct of its citizens, with regard to such relations. The Federal Government has the exclusive right, and to it appertains the sole duty of regulating the intercourse with foreign States.[b] If legislation should be attempted on the subject of foreign intercourse and neutral relations, by a State, it would be the re-assumption of a power clearly and expressly delegated to the General Government. The assemblage of persons on our borders, armed and actuated by an intention to make incursions into the Canadas, would be unlawful, not in regard to the laws of this State, but in regard to those of the United States. It behooves the Government, which has the exclusive right to impose the duty, to provide for enforcing its performance.

There would be much difficulty, as well as delicacy, in the attempt on the part of the Legislature of this State, to devise sanctions for laws enacted by Congress; that is, by a distinct and independent legislative power. This

[b] Const. U. S. art. 2, § 2, clause 2.

State cannot prescribe to its citizens their duty in relation to neutral relations. The duty on their part to sustain these relations with foreign powers, is a duty which they owe to the General Government. So far, therefore, as the armed assemblages referred to in the resolution, whether actually formed or only contemplated, are to be considered, as unlawful, in regard to the laws of the United States, I am not prepared to suggest measures concerning them, believing that any adopted for such an object would be beyond the range of State legislation, and if attempted to be executed, could not fail to bring the State authority in conflict with that of the United States; and believing also, that the General Government will speedily provide an efficient remedy for the apprehended evils.

An armed assemblage of our citizens, if it were unlawful with respect to State laws, would be an insurrection, and the civil magistrates are now vested with authority to suppress it. I would, however, as somewhat connected with this subject, recommend that the laws in relation to calling out the militia, as well to repel invasion as to act in aid of, and in subservience to, the civil authority, in suppressing insurrections, riots and mobs, should be revised, and the cases in which the military power is required to act, should be clearly defined, and the manner of calling them out on such occasions be explicitly stated.[9]

W. L. MARCY."

EXECUTIVE CHAMBER,
Albany, 5th March, 1838.

March 13. To the Senate: Transmitting resolutions adopted by Kentucky relative to existing financial conditions, protesting against the veto of the bill rechartering

[9] This message was referred to a joint committee of the two houses, which gave the subject quite extended consideration and proposed a bill intended to carry into effect the governor's suggestions concerning the use of the militia, but it was not passed.

the Bank of the United States, recommending a uniform currency, favoring a federal bank as the best means of maintaining a sound currency, condemning the alleged wasteful extravagance of the general government, and several acts of President Van Buren's administration; also a resolution adopted by the Legislature of Ohio protesting against the annexation of Texas.

April 4. To the Assembly:

"Your attention is called to the subject of the expenses which have been incurred, by reason of calling into the public service the militia of this State during the past winter, for the defence of its frontier.

These expenses having been incurred for the public defence, ought undoubtedly to be paid by the General Government. Accordingly on the 31st day of January last I addressed a letter to the Hon. Joel R. Poinsett, Secretary of War, in relation to the subject, suggesting the appointment of some officer by the General Government, with power to audit and settle the claims which have arisen, in consequence of a sudden call of our militia into the field in the midst of winter, and under circumstances of an unusual character. But if the payment of these expenses were to be made in the first instance by the State, I then asked for such directions in relation to the settlement of them, as would, on a final adjustment of the accounts, prevent any collision between the State and the General Government.

From the reply of the Secretary of War I was induced to believe that the claims alluded to, would be found to fall either within the authority vested by law in the proper officers mentioned in his letter, or within the powers of the war department, to adjust. I therefore, in pursuance of the Secretary's letter, caused the accounts and claims which had been forwarded to me, to be sent immediately to the officers of the pay department, the quartermaster's

department and the subsistence department of the army, then at Buffalo. These officers not deeming themselves authorized to settle the claims, transmitted them to the war department at Washington for its action, in accordance with the directions of the Secretary.

Subsequently to this time, the Adjutant General received a letter from the commandant of the 5th brigade of infantry, who had been out with a portion of his brigade at Niagara Falls and its vicinity, urging the necessity of an early payment of the claims of those persons, who had furnished supplies to his troops while in the public service.

At my request, the Adjutant General then wrote to the Secretary of War, calling his attention again to the subject, and enclosing him an extract of the letter received from the commandant of the 5th brigade of infantry, showing the importance to the claimants of a speedy settlement of their demands.

To this letter of the Adjutant General, the Secretary of War replied that the department had not the power to make payment to the troops or to liquidate the claims in question, but that both subjects had been laid before Congress, and that it would doubtless confer upon the department, the necessary authority to pay the troops and to satisfy the claims. The Secretary of War forwarded with this letter a copy of a letter from the Pay-Master-General, exhibiting the want of authority in the department to pay these troops. I still had hopes, from the tenor of the Secretary's letter, that Congress would make full and speedy provision for the payment of these expenses, which were not a little strengthened by observing in the published proceedings of the House of Representatives, that the subject had been referred to a committee of that body. But the accounts for claims in favor of the 5th brigade of infantry, which had been forwarded to Washington, have been returned, and were yesterday received here from the Assistant Quarter Master of the United States Army at Buffalo,

together with a copy of a letter from the acting Quarter-Master-General upon the subject. This officer advises that the State pay these expenses in the first place, and then make an appeal to Congress for relief.

I was impressed with the belief from the beginning, that as the payment of the expenses attending the calling out of the militia for the defence of our frontier properly belongs to, and in the end must fall upon, the General Government, it would be highly expedient for that government through its officers, to meet those expenses in the first instance. I still think, from the advices received from the Secretary of War, that Congress will make provision for the adjustment of them before the close of its present session. But as the claimants are anxious for a speedy settlement of their demands, and as the action of Congress may yet for some time be delayed, or possibly fail altogether at the present session, I have deemed it proper to lay the whole subject before you, and to recommend, as I hereby do, that you make provision for the immediate settlement of these accounts by the State.

Portions of four different brigades, have been called out during the winter for the defence of our frontier, by the officers of this State. Of these portions of brigades, two, viz. the 47th brigade of infantry and the 8th brigade of artillery, have been mustered into the service of the United States; and in consequence thereof a part of the expenses incurred by these brigades have been paid by the officers of the General Government. But there are still several claims on account of these two brigades, which arose before they were so mustered, which the above named officers decline paying.

The portions of the other two brigades which have been called out, to wit: the 5th, already mentioned, and the 55th infantry, were not mustered into the United States service, and consequently no part of the expenses incurred by them have been paid.

I send you herewith, the accounts of expenses incurred by the said 5th brigade, as they have been transmitted to me. These do not include the pay to which the officers and men may be entitled for their personal services.

I transmit also a letter received this day from Major General Corss, stating the amount of the expenses incurred for the support of that portion of the 55th brigade of infantry, which was in service at French Creek, Jefferson county, under his command. Any other accounts or claims which may be received from the several brigades, will be immediately laid before you.[10]

W. L. MARCY."

EXECUTIVE CHAMBER,
Albany, April 4, 1838.

April 12 and 13. To the Assembly and Senate respectively:

"FELLOW-CITIZENS.—The time is not far distant when the banks of this State will resume specie payments; and it can now be anticipated with tolerable certainty what will be the situation of things when this event shall take place. The period of resumption has been looked for with much anxiety, and strong hopes have been indulged that it would be attended with a highly important improvement in the business concerns of the country.

Since the general suspension of specie payments in the month of May last, the banks, which have furnished their monthly statements to the Commissioners, have made commendable efforts to put themselves in a condition to resume. On the 1st of June last their liabilities amounted to about sixty-four millions of dollars, while the debt due to them for loans and discounts exceeded sixty-seven mil-

[10] Chapter 307, passed April 18, appropriated $20,000 for expenses incurred in calling out the militia for the defense of the State, and the Governor was directed to take the necessary measures to cause the amount so paid to be reimbursed by the federal government.

lions. From that period to the present time a course of rapid curtailment has been steadily pursued, so that their liabilities on the first of the present month were but fifty-three millions, and their loans and discounts were less than fifty-six millions. By this process of reduction, the condition of our banks has been greatly improved, and their ability to meet and sustain specie payments is now fully equal to what it has been at any former period. This remark is particularly applicable to the banks in the city of New York, where, amidst a general depression of business, the most vigorous and praiseworthy efforts have been put forth to prepare for an early and successful resumption. The institutions in that city have, during the suspension of specie payments, reduced their liabilities more than six and a half millions of dollars. Their specie during the same period has increased from about one million eight hundred thousand dollars to more than three millions five hundred thousand dollars, to which, in estimating their ability to meet their engagements, should be added about one million and a half of dollars purchased and ordered from abroad, and expected to arrive early in the ensuing month. The banks throughout the State which have made reports to the Commissioners have reduced their liabilities more than eleven millions of dollars, their loans and discounts about the same amount, and their circulation from about nine millions of dollars to about four millions.

The banking institutions of this State are therefore in the best condition for a return to the payment of specie, and appear to be determined, as they certainly should be, that no effort on their part shall be wanting to place the State and its business interests in the most desirable position.

The reduction of discounts, the contraction of circulation, and the means employed to procure a supply of specie — all rendered necessary in preparing for resumption — have borne heavily upon almost all classes of our citizens,

and been particularly injurious to those branches of business, which required the use of large capitals, or depended upon credit for success.

Owing to causes alluded to in my message at the opening of the present session, our constituents in all parts of the State shared largely in the distresses which preceded and immediately followed the suspension of specie payments. Such was the case in an especial manner with the citizens of our great commercial emporium. The loss of about fifteen millions of capital by the fire of December, 1835; the interruption of business by the unparalleled commercial revulsion which soon followed that disastrous event; the sudden withdrawal from deposit, in the midst of all this depression, of ten millions of public money; — all having occurred within the space of about twenty-seven months,— cooperate with other considerations to induce the Legislature to extend its aid in an efficient manner, if it should become necessary, to shield our institutions from threatened hostility, and thereby to protect and foster the general interests of the people. It is also proper to remark, that about three millions of the amount of deposits withdrawn from the banks in the city of New York, were apportioned to the several counties and towns in the State, and loaned to the citizens thereof, under the law of the last session in relation to the surplus moneys of the United States.

There is also another feature in the case, presented by the depressed state of business in the city of New York, which should not pass without observation. A large portion of the trade of that city is transacted with distant sections of the Union. The causes which have operated so extensively to derange the general currency of the country, have produced the most serious effects in the States at the south and west. There is reason to believe that the banks in that vast and important region, have not been influenced, in an equal degree, by the considerations which have con-

trolled our institutions, and brought them into a sound condition; but that, on the contrary, they have so far extended their issues of paper, as materially to diminish its value, and render it of little use as a medium for the collection of debts due to our citizens. The losses by the course of domestic exchanges, consequent upon the great depreciation in the value of southern and western bank paper, have added to the embarrassments of our merchants, and greatly impaired their resources.

Although the suspension, owing to various causes, has operated much more severely in some cases than in others, it must be regarded as a common calamity, and its continuance cannot be otherwise than injurious to all sections of the country; it is therefore to be regretted, that all sections have not felt an equal solicitude for the restoration of our currency to a sound condition, and adopted measures equally vigorous for producing so desirable a result. Such, however, has not been the course of proceeding on the part of all. Indeed, it is now no longer a matter of doubt, that the movement here in relation to resuming payments in specie, must be made without the cooperation of any other State.

I have not been able to discover any adequate reason why the banks in most of the other States, and particularly in the Atlantic cities, could not have been in as favorable a condition to resume as our own. The main causes which led to the suspension have for some time ceased to operate, and others of an opposite tendency are exerting a beneficial influence in restoring the currency to a healthful state. The commercial debt abroad, which was large at the period of suspension, and the pressing demand for which was one of the principal causes of that calamity, is now mostly paid off or arranged; foreign exchanges are decidedly in our favor; the precious metals, instead of being in demand for exportation, are coming into the country in great abundance from every quarter.

In a state of things so favorable to a general resumption, it can scarcely be doubted that, with proper preparatory measures, the banks in most parts of the Union, if they had acted in concert, or with reference to the general prosperity of the country, might have been in a situation to resume specie payments as early as the period fixed on for that purpose by the banks of this State. It is not to be denied that these preparatory measures, whenever resorted to, must lead to a temporary increase of embarrassment in most branches of business. While one place or section of the country submits to the sacrifices which result from these unavoidable measures, for the purpose of removing the evils of a disordered currency, it was to be hoped that other parts of the Union would not be so far misled by any narrow views of temporary and local interests, as to decline the like sacrifices and refuse a ready concurrence in a course of proceeding so essential to the general prosperity.

For the purposes of this communication, it is not important to determine the cause or the motive that has influenced the conduct of those institutions which have refused to co-operate with ours in the measure of resumption. It is now reduced to a moral certainty that there will be no general movement on this subject, and that the banks of this State will enter upon that measure without the co-operation — and I wish I could say they would be permitted to maintain themselves in it — without the open or covert hostility of those which cannot, or will not, unite with them or immediately follow their example.

The suspension law of the last session will expire on the sixteenth of May next, and the banks in the city of New York have determined to resume the payment of all demands against them in specie on the tenth of that month. The country banks of this State are prepared to take the same step at the same time; and all classes and interests, it is believed, are ready to aid these efforts by a generous

confidence and approval. I do not doubt that our institutions will sustain themselves, whatever may be the course pursued by the banks in other States; but the effects of this measure upon the business concerns of the people of this State, will depend in a great degree upon the relation in which our banks will be placed in reference to those in other parts of the Union; and in an especial manner, to those in the neighboring Atlantic cities. If all or nearly all the banks in the principal commercial places had resolved, as it was anticipated a short time since they would do, to resume at about the same period, and had entered upon that course earnestly, in good faith, and with kindly feelings towards each other, they would have met with few difficulties; they might probably have expected mutual forbearance in any emergency, and certainly would have had no cause to fear hostility from any source whatever. Vigorous and united efforts among themselves would have accelerated the return of public confidence, and with it they would have been at once in a condition to dispense those accommodations which a wholesome state of business requires.

Until very recently, it was generally expected that such would be the course of events. It was confidently believed that the period of general resumption, at least throughout the eastern, middle, and some of the western States, was at hand; that it would be the beginning of an auspicious change in our pecuniary affairs; that the gloom which had been too long gathering and thickening over the land, would thereafter gradually disappear, and we should be cheered by a season of wonted prosperity.

I regret that it becomes my duty to announce to you that these pleasing anticipations are not likely to be realized, and to exhibit to you a much less inviting prospect — a prospect in which our banks will not only have to commence without co-operation the resumption of specie payments, but will, for some time at least, have to stand alone,

and struggle not only with the inevitable difficulties of such a measure, but with others perhaps superadded to them, arising from the condition, and possibly from the hostility, of non-specie paying banks in other States. Surrounded on all sides, as we shall be, by banks emitting irredeemable paper, it is not perhaps uncharitable to indulge a fear that they may consult their own interest by making efforts to embarrass and circumscribe the operations of our institutions, with a view of securing to themselves the benefits of an extensive circulation of their bills in this State. In this manner we may be deprived of a sufficient supply of a sound currency, and in our necessities be forced to use their depreciated paper, and thereby minister to their interest; while they are persisting, contrary to good policy and in violation of their own obligations, in holding themselves in an irredeemable state.

But assuming, as it is proper perhaps that we should do, that the refusal of the banks of other States to unite with ours in resuming, is owing to a conviction on their part that they are not in a condition to sustain themselves in that measure, they will undoubtedly avail themselves of the means which the resumption in this State will afford them, to recover from their weakness, and transfer to themselves the resources which our institutions have at considerable expense provided for their own security. Banks that persist in issuing an irredeemable currency will by the use of it be enabled to possess themselves of claims against such as have resumed, and by exacting specie and refusing to pay it in satisfaction of demands against themselves, they will be enabled to impair and eventually exhaust the resources of the latter institutions, unless they circumscribe within narrow limits their accommodations to the public. Situated as our banks are in relation to those in the Atlantic cities which have announced their determination to continue the issue of an irredeemable currency; considering the amount of their capital and their

immense resources, and the probable consequences of a serious attempt by them, confederated and co-operating in favor of the suspension policy, or even by the United States Bank of Pennsylvania alone — with a capital much larger than the aggregated capitals of all the banks in the city of New York — to withdraw the specie which has been collected by our institutions as a necessary preparatory step to resumption; and looking to the deplorable effects which would result in the remote contingency of being obliged by the aggressions of the non-specie paying banks, or other untoward events, to suspend a second time; every consideration of prudence will induce our banks to proceed with the utmost circumspection, and to confine their operations within perfectly safe limits.

If there were no other object to answer than to ensure the success of the attempt to resume, the subject would be presented to us in a much less imposing aspect, and interposition by the Legislature might not be deemed necessary; but if the banks are to continue in their present contracted state after they have resumed, and particularly if the circumstances to which I have alluded, and others of an obvious character, are likely to require further contraction on their part, very few indeed of the benefits which have been anticipated from a return to specie payments will be realized.

Though they discharge their obligations in the legal currency, if they continue to reduce their discounts or if they do not gradually expand, the public will not be essentially relieved; the laboring classes will look in vain for their accustomed employment; most kinds of agricultural products will decline in price; our manufacturing establishments cannot be put in successful operation; various branches of mechanical business will be deprived of a wholesome degree of encouragement; trade will continue in its depressed condition; the disorders of the currency

will be but partially removed, and the immoral practices which spring from such disorders, will be but partially remedied.

It is confidently believed that the interposition of the credit of the State, in case an emergency shall arise imperiously demanding a resort to such a measure, would give success to the efforts now making to correct the numerous evils which have arisen from the present deranged and vitiated state of our currency; and it appears to me that if such would be its effects, there should be no hesitation on the part of the Legislature in applying the remedy. The benefits of such an interposition would be general, inasmuch as it would contribute in no inconsiderable degree to relieve almost all branches of business from depression, and all classes of our citizens from the inconveniences inseparable from the use of an irredeemable and depreciated paper.

To avoid the creation of a new stock for the express purpose of being loaned to the banks for a long period, I recommend that the Commissioners of the Canal Fund be authorized to issue stock, which it is now certain will become necessary within a few years, for the enlargement of the Erie canal, and the completion of the Black River and Genesee Valley canals, and if the apprehended emergencies should arise demanding its use, to loan it to the banks, requiring of them the most ample security for the punctual payment of the interest, and the reimbursement of the principal from time to time, as the money may be wanted in the progress of their works.

The amount necessary for the completion of these works will exceed the sum which may be required in any event to sustain our State institutions against hostile attacks, from whatever quarter they may come, and to enable them to grant such assistance as will invigorate all branches of industry, call forth the energies of the State, and give an onward movement to its business concerns. Although in-

telligent merchants and bankers are of opinion that it will not probably be necessary to use the credit of the State, yet it may be otherwise; and the recent exposition of the views and policy of the Bank of the United States, increases the apprehension, that a crisis will arise, in which the credit of the State to some extent may be required. With a view of making ample provision for any such exigency, I respectfully recommend that authority should be given, in the manner suggested, to issue stock for the contemplated purpose, to the amount of six or eight millions of dollars.

This recommendation does not, it will be perceived, propose the creation of a stock, and eventually if need be, the raising of money expressly for sustaining the banks in the measure of resumption, and retrieving from their present depression the business concerns of the people; but it suggests for these highly important purposes, that the moneys which it is known will be required for the public works already authorized by law, should be raised a short time before they are wanted for expenditure. It is by no means certain that it will be necessary to use the power hereby recommended to be invested in the Commissioners of the Canal Fund, but the consequences which would result to the state at large, in case the contingency which might require its exercise, should happen, would be so extremely injurious, that I deem it expedient that the measure herein suggested, or some one of a similar character should be adopted.

A new interest is, in my opinion, given to the subject I have presented, and much force is added to the considerations in favor of the measure I have recommended, by the course of conduct which it is the avowed intention of the United States Bank of Philadelphia to pursue in relation to the resumption. Had the determination to oppose a return to specie payments, and the bold avowal of the policy of maintaining irredeemable issues come from any other quarter, they would have caused much less surprise

and regret. This institution has a capital of thirty-five millions of dollars, and possesses, by the terms of its charter, much more than ordinary banking powers and privileges; it has its agencies and long established business connections in almost every State in the Union, it enjoys an extensive credit, not only in this country, but in Europe, and its resources derived from this consideration alone, are immense; it most confidently relies, as appears by the language of its President, upon the subserviency of the banks of all the States except New York, in falling into its views and co-operating with it in carrying them into effect. When this formidable power — I believe I am warranted in saying, this formidable combination of powers — is arrayed against the measure of resuming specie payments, and has become the open champion of the suspension policy and the advocate of an irredeemable currency; when it is publicly announced by the President of the United States Bank, the central power, as it may be called, of a confederation of banking institutions, that the uncertain period of resumption must be delayed until the accomplishment of certain pecuniary operations and political objects which are distinctly shadowed forth in his letter, there is very strong reason to fear that the banks of this state will not be permitted to pursue the course which they have resolved to take, without encountering more than the intrinsic difficulties of the measure. I am confidently persuaded, that a vast majority, if not almost the entire mass, of our constituents, are opposed to, and will expect their representatives and public functionaries to resist, the policy put forth by the United States Bank, of continuing the issue of an irredeemable currency. In the division which will spring from the extraordinary position taken upon this subject, the people of this State, and its banking institutions, will, I trust, be found among the friends and supporters of a sound currency — a currency equivalent in value to the legal standard, and will be arrayed against the policy of

continuing the issue of irredeemable paper. To carry out their views in relation to this subject; to sustain our institutions in the measure of resumption, and to put an end to the evils of a debased circulating medium, I cannot doubt that they will approve of the interposition by the Legislature in the manner I have suggested, or in any other more efficient manner that may be devised. Viewing this subject in reference to the present posture of our pecuniary affairs; to the embarrassment in which almost all branches of business are involved; and especially in reference to the attempt by a formidable moneyed power to prolong the suspension of specie payments, beyond the period imposed by necessity, I believe the present crisis must be generally regarded as one in which it is 'the duty of the state to stand forth in its strength, and by the use of its credit, and the sanction of its name, to shield its institutions and its citizens from harm,' I am ready to cooperate with the other departments of the government, in every proper effort that shall promise such a result. [See note 5.]

W. L. MARCY."

Executive Chamber, Albany, April 12, 1838.

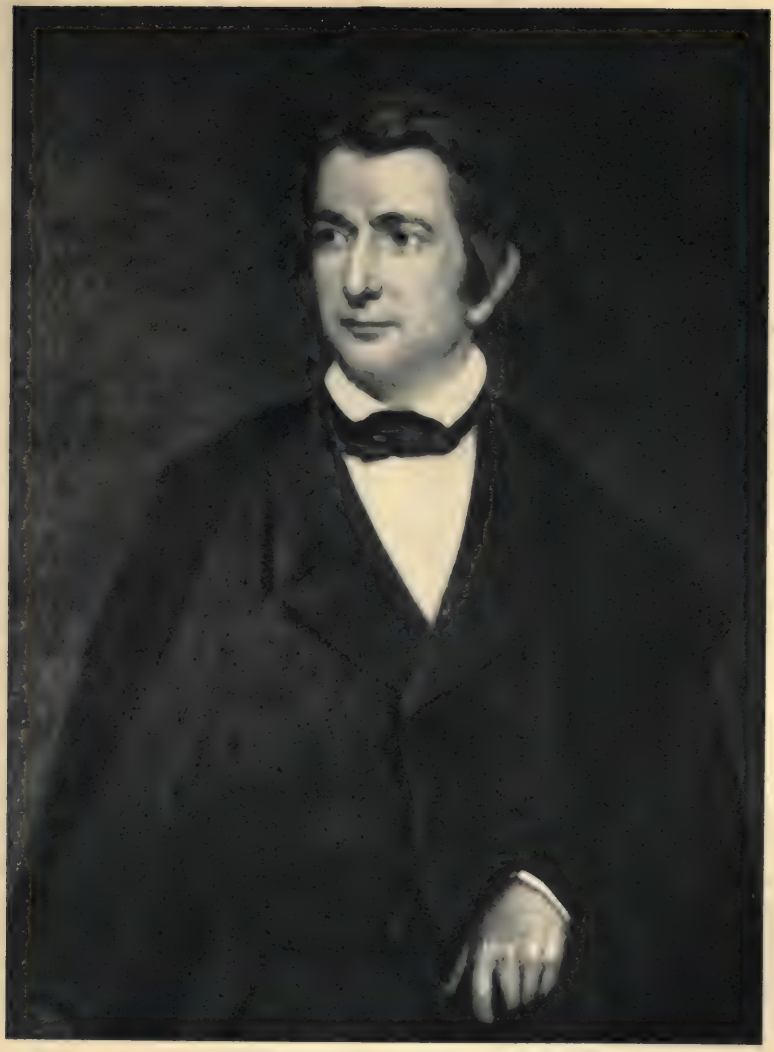
April 17. To the Assembly: Transmitting resolutions adopted by the Legislature of Arkansas favoring the passage of a bill recently introduced by John C. Calhoun in the federal Senate, providing for the cession of public lands. The preamble stated the claim of Arkansas to all public lands within that state, and the need of it for use in promoting certain public improvements.

April 18. The Legislature adjourned without day.

WILLIAM H. SEWARD, Governor.

ANNUAL MESSAGE.

Fellow-Citizens.— In the annals of our country, no year has been more signally distinguished by unmerited blessings than that which has just reached its close. The seasons have been genially tempered for the health of man, and the earth has abundantly rewarded his labors. Relations of peace, of reciprocal advantage and benevolent intercourse, have been maintained with foreign states. The sway of the laws has been uninterrupted; and all the circumstances affecting our social condition have been auspicious. Our State has abundantly participated in the general prosperity and happiness. Our schools and other seminaries have discharged their beneficent functions with increased efficiency. The worship and instruction of the Christian Religion have been enjoyed by our citizens with freedom of conscience as to their faith and forms, and without compulsory support. The gloom which gathered over our country, in a period of commercial embarrassment, has passed away; and the enterprise of our people is resuming its suspended employments in every department of social industry. The angry passions which availed themselves of that disastrous time to subvert the public confidence in some of our institutions; to disseminate pernicious opinions, and bring forward measures of rash and intemperate legislation, have subsided, under a prevalent conviction that it is wiser to preserve than to destroy — and to cherish a spirit of conciliation, harmony and generous emulation, than to indulge jealousies and contentions. The zeal and patriotism manifested in our elections, prove that vigilance, the guardian of liberty, is



William H. Seward.

yet unsleeping; while the peaceful and discriminating vindication of right principles, has given renewed confirmation of the excellence of republican institutions. These manifestations of His favor imperatively demand our gratitude to Almighty God. Happy will it be for our country, and thrice happy for us, upon whom the responsibilities of legislation have fallen, if they shall inspire us with submissive obedience to His will, and a sense of constant dependence upon His protection and support.

The balance in the treasury, on the first day of October, 1837, was $1,526,032.40, and the receipts during the last fiscal year, were $4,371,923.68, making an aggregate of $5,897,956.08. The sum of $5,786,981.51 was paid out of the treasury in the same period. There remained in the treasury on the 30th of September, 1838, applicable to the ordinary expenses of the Government and to the claims of the special funds, $110,974.57. There are due from the General Fund to the specific funds, the following sums, viz: to the Common School Fund, $169,007.55; to the Literature Fund, $21,710.90; to the Bank Fund, $13,022.92; to the Erie and Champlain Canal Fund, (a temporary loan) $1,159,886.18, the aggregate of which indebtedness is $1,363,627.55. Deducting from this amount the balance due from the United States Deposit Fund, being the value of the fourth instalment withheld by the Federal government, $1,181,890.17, and also the balance remaining in the treasury, $110,974.57, there remains a deficit of means in the treasury of $70,762.81, for the debts to the specific funds.

The scrupulous good faith which the Federal government owes to the several States, and the mutual confidence necessary to the successful operation of our complex system, alike demand the reimbursement to this state of the funds advanced to our citizens, upon a pledge, which that Government, with unlimited resources and credit, for reasons most inconclusive, refused to redeem. And the occasion seems proper to assert and maintain, temperately

but firmly, that the return to the people of the surplus funds drawn from them by indirect taxation, and accumulated from the sale of lands, of which the National Government was their trustee, ought to be immediately deprived of the character of a loan, and declared an absolute distribution. No policy can be more unsound than to relieve that government of direct responsibility in regard to its finances. It has disclaimed the power, as well as the policy, of internal improvement. For any exigency of the public defence it will have abundant ability to provide when it occurs. It is unnecessary and dangerous to the liberties of the people, that it should retain a lien upon the States for forty millions as a contingent resource, stimulating to extravagant expenditure and improvident legislation.

The sum disbursed for salaries and office expenses of the several State officers during the year, was $66,115.71; for the payment and contingent expenses of the Legislature, $82,852.32; for printing for the State, $29,663.83.

The amount received for auction duties is $142,102.35; for the salt duties, $108,929.55. It requires your constant care to render these revenues as productive as possible, without injury to the important interests concerned.

The auction duties in 1837, were $214,458.62. In 1838, only $142,102.35. It is worthy an immediate investigation, whether this diminution results from any defect or abuse of the act of the last session in relation to the subject.

I regret to inform you that there is no improvement of the revenue derived from the manufacture of salt.

The saline waters are an inexhaustible source of public wealth as well as revenue. Four enterprising villages — Syracuse, Salina, Geddes and Liverpool — have already sprung up on the shores of the Onondaga Lake, containing within a square of four miles a population of about 10,000. The chief element of their prosperity is the manufacture

of salt. The entire western part of the State is dependent on these springs for this indispensable product. It is capable also of being rendered a valuable article of internal trade with adjacent States. The manufacture demands Legislative protection and care, therefore, not only upon the ground of revenue, but of public utility.[1]

The aggregate of tolls, including rents of surplus water, collected on all the canals during the last fiscal year, was $1,481,602.41. The cost of repairs and of the collection of tolls on all the canals was $639,714.32, which, deducted from the receipts, leaves the net proceeds from tolls, for the year, $841,888.09. The cost of repairs and collections during the last year exceeds that of the previous year $30,806.59. The net revenue of the last fiscal year exceeds that of the preceding $128,085.25.

The income of the Erie and Champlain Canal Fund from all sources, including the interest on $2,259,834.65, (the sum set apart to pay the remainder of the debt contracted on account of the Erie and Champlain canals) is $1,553,-136.84. Of this amount there have been expended as follows: for repairs of the canals $449,058.64; of which were expended by superintendents of repairs $365,661.95, and by the Canal Commissioners $83,396.69; for interest on the debt $129,374.05, and sundry payments $26,892.65, leaving the surplus revenue of the Canal Fund for the last year $947,811.50.

The Canal Commissioners have expended in the last fiscal year for the enlargement of the Erie canal, $1,161,-001.80. They borrowed, under authority of the act of April 18th, 1838, including the premium, $1,005,050; leaving an excess of expenditure over the amount loaned of

[1] Chapter 188, passed April 17, appropriated $1,000 for the purchase of a recently patented gravel pump for use in connection with the Onondaga salt works. Chapter 227, passed April 25, in relation to the Onondaga and Montezuma salt springs contained several details concerning administration. Chapter 341, passed May 4, provided for laying out fine salt lots at Geddes.

$155,951.80, which was paid from the surplus, and leaves the net surplus of the Erie and Champlain Canal Fund, after paying all charges, $791,859.70.

The amount of tolls collected on all the lateral canals is $58,264.76. This amount exceeds the aggregate of the preceding fiscal year, $12,979.58, and falls short of that of the year which ended on the 30th September, 1836, before the navigation of the Chenango Canal, $2,531.42. The deficiencies in the income of all the auxiliary canals to meet the expenses of repairs and of collection of tolls, and the payment of interest on the debt contracted for their construction, is $229,160.59; which amount deducted from the aforesaid net revenue of the Erie and Champlain canal fund, leaves the net revenue of that fund, after paying all charges upon it, and the deficiencies of all the auxiliary canals, $562,699.11.

The deficiencies of the several lateral canals are as follows: of the Cayuga and Seneca canal $15,517.62; of the Crooked Lake $10,037.55; of the Oswego $54,460.70; of the Chemung $29,833.11, and of the Chenango $119,311.61. The aggregate of tolls collected on all the canals during the last fiscal year exceeds that of the previous year by the sum of $154,821.51, and falls short of that of the fiscal year which ended on the 30th of September, 1836, $120,178. But the tolls collected on all the canals during the season of navigation in the year 1838, exceed those of the same season in 1837, by the sum of $297,555, or 23 per cent. Of this excess $130,788.97, or 44 per cent, is upon ascending, and $166,766.03, or 56 per cent, upon descending freight. This estimate is made upon data which may be assumed as substantially correct, although it is to be understood as not precisely accurate. This comparison while it demonstrates the severity of the pressure which has recently visited our State, not only furnishes cheering evidence of returning prosperity, but gives assurance of the constantly

increasing productiveness of our system of internal improvements.

The aggregate of loans made for the construction of canals now in progress, is $2,615,182.84, to wit, for the Black River canal $613,076.29, and for the Genesee Valley canal $2,002,106.55. There have been paid on account of the construction of these canals $384,353.12, to wit, for that of the former $122,793.52; for that of the latter $261,559.60; and there remains on deposit in the banks, drawing an interest of 5 per cent, (equal to that on the loans,) the balance $2,230,829.72.

The productive capital of the Common School Fund, is $1,929,707.51, and the revenue during the last fiscal year, was $102,994.09. The increase of capital during the year, was $13,059.83, and of revenue $8,644.16. The annual apportionment paid to the common schools in February, 1838, was $110,000.

The capital of the Literature Fund is $268,092.87, and its revenue has been $25,296.91. This revenue exceeds that of the previous year $12,280.51, being increased by the receipt of the deferred dividends upon bank stocks, in which a portion of the capital is invested. The payments from this fund during the year, were, to academies $11,980.78, for the education of teachers $2,900, for books $2,835. In pursuance of an act of the last session, there has been paid from the United States Deposit Fund to the University of the City of New York, $6,000, to Geneva College $6,000, and to Hamilton College $3,000.

The Bank Fund has a capital of $713,208.40. Its revenue was $31,012.51. A dividend has been paid to the contributing banks of $25,858.88, being 3½ per cent on the capital. There is due to the capital from the Lockport Bank $23,684, paid in redeeming the bills of that institution.

It is respectfully submitted, that more perfect responsibility would be secured if the term of office of Canal Com-

missioners should be limited so as to bring them periodically before the appointing power, retaining the provision for their removal at earlier periods if the public interests should require. Of the $1,481,602 canal tolls received, $104,645, about one-fourteenth part, is expended in payment of inspectors, clerks, collectors, and tenders of locks. And the sum of $639,714, almost one-half, is consumed in these payments and repairs. It scarcely admits of doubt, that the system is capable of such revision as would reduce these heavy expenses, and proportionally increase the net revenue of our canals. The compensation of the superintendents and collectors ought to be fixed by law, instead of being left to the pleasure or caprice of the Canal Commissioners, or the Canal Board.

With the extension of our internal improvements, there has been an immense and unlooked for enlargement of the financial operations and the official power and patronage of the Canal Commissioners and the Canal Board. These operations are conducted, and this power and patronage exercised and dispensed with few of those requirements as to accountability and publicity enforced with scrupulous care in every other department of the government. So inconsistent and unequal are the best efforts to maintain simplicity, uniformity and accountability throughout the various departments, that a great, mysterious and undefined power has thus grown up unobserved, while the public attention has exhausted itself in narrowly watching the action of more unimportant functionaries. It is a proposition worthy of consideration, whether greater economy and efficiency in the management of our present public works, would not be secured; a wiser direction given to efforts for internal improvement through the State, and a more equal diffusion of its advantages be effected by constituting a Board of Internal Improvements, to consist of one member from each Senate district. This board might be divided into two classes, the term of one

of which should expire annually. It should discharge all the duties of the present Canal Board; should audit all accounts, have the general superintendence of the canals, and all other public works, with powers of investigation in regard to those in which the State has an interest by loan or otherwise; report upon all special applications for surveys, or aid, and annually submit a detailed statement of its proceedings to the Legislature. It is the worst economy to devolve upon officers constituted for one department, duties appurtenant to others. Its universal results are diminished responsibility and diminished efficiency in both the principal and incidental departments.

Our militia consists of horse artillery, 1,452; cavalry, 6,290; artillery, 9,142; infantry, including light infantry and riflemen, 162,457. Companies of artillery and other uniformed corps attached to brigades of infantry, 3,090. The entire militia force is 182,431.

The site of the Lunatic Asylum was well chosen. It is an elevated plain of one hundred and twenty-four acres, susceptible of that ornamental cultivation which is a wonderful auxiliary in the treatment of the insane. The vicinity of the flourishing central city of Utica, affords many facilities for its construction, and promises those moral and social aids which such a public charity requires. A plan submitted by the Commissioners, received the approbation of my predecessor. The plan contemplates four edifices, consisting of a basement and three stories, except the main building of the principal front, which will have an additional story. The four edifices are to be located at right angles to each other, fronting outward, and to be connected at the angles by verandas of open lattice work, the whole inclosing an octagonal area of about thirteen acres. The buildings are to be constructed of the blue lime stone from Little Falls, and in the Doric order. It is designed to furnish the necessary accommodation for the care and treatment of one thousand lunatics. Its east

front will command a view of the city, and the north will enjoy a prospect of the canal, the valley of the Mohawk and the long range of hills in the distance which divides the waters flowing into Lake Ontario from the tributaries to the Hudson. The principal part of the basement has been constructed, with an expenditure of forty-six thousand dollars, exclusive of the cost of the site. Thus you will perceive the foundation has been laid of a charitable institution commensurate with the exigencies of the State, not unworthy of its growing wealth, and justly designed to endure as a monument of the taste and munificence of this age. It is right to award both the honor and responsibilities to those who have hitherto been charged with the execution of the trust. The law declared that on the selection of the site the commissioners should be authorized to contract for the erection of the Asylum upon such plan and on such terms as they should deem proper, provided that the plan and the terms should be approved by the Governor; and that the Commissioners should superintend the erection of the building. No contract for the construction of the Asylum was made either before or after its commencement. The document furnished by the Commissioners, and herewith submitted to you, states the probable cost at $431,636. It is obvious there is no security that the expenditure will not exceed that sum. Whether these proceedings have conformed to the intention of the Legislature is a question which I shall not be expected to discuss. I cheerfully express my approbation of the undertaking. Nations are seldom impoverished by their charities. The number of the insane in the State is not exaggerated; and I am not prepared to say that any erection less extensive would afford the space, light, tranquillity and cheerfulness indispensable to this interesting department of the healing art. Among all His Blessings none calls so loudly for gratitude to God as the preservation of our reason. Of

all the inequalities in the social condition, there is none so affecting as its privation. He sees fit to cast upon our benevolent care those whom he visits with that fearful affliction. It would be alike unfeeling and ungrateful to withhold it. Let then this noble charity be carried forward. With what measure of munificence it remains with you to determine. The commissioners will apply for an appropriation of one hundred thousand dollars for the present year.[2]

The number of pupils in the New York Institute for the Deaf and Dumb, on the 10th of November last, was 145. The number enjoying its advantages at the public expense, is 120. An additional building has recently been constructed, with an expense of $8,000. The institution is in a prosperous condition, as well in regard to internal management, as its course of instruction and finances. Its success in conveying knowledge, sympathy, affection and happiness to the unfortunate beings whom a mysterious Providence has denied two of the faculties most important to their enjoyment, although it has ceased to be a wonder, is not less deserving our gratitude.[3]

The institution for the blind, a new and noble charity, has been recently founded in New York, and is in successful operation. It has sixty-one pupils gathered from all parts of the State. Privation of sight is seldom a solitary calamity. These unfortunates are not only blind, but their persons often bear the marks of long disease or extreme poverty. This institution having become a beneficiary of the State, and depending rightfully upon the public munificence for success in its benevolent enterprise, it seems

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2 Chapter 310, passed May 1, appropriated $75,000 to be used in erecting the State Lunatic Asylum at Utica.

3 Chapter 329, passed May 3, authorized the purchase of copies of a newspaper called "The Radii" for distribution among the "deaf and dumb persons in this state of the poorer class."

proper to afford to it the advantages, and to the public, the security, of visitation by the Secretary of State.[4]

The house of refuge continues to discharge its duties in reclaiming the juvenile delinquents whom an enlightened policy commits to its care, instead of consigning them to the association and discipline of more hardened convicts. Could not the same policy be extended in some manner, to the preliminary examination and trial of this class of offenders? There is no doubt that the public and unfeeling manner in which these proceedings are conducted, confirm in habits of guilt many whose crimes are the result only of neglect of moral culture, and who, by prudence and kindness, might be reclaimed and rendered useful members of society.

I commend, without hesitation or qualification, all these humane institutions to your guardian care and provident assistance. The philanthropy of our age seems not only to be imbued with unexampled benevolence, but gifted with powers almost divine. She brings to the deaf and dumb, the joys of conversation; to the blind, the knowledge and uses of external relations; calls back erring reason to its throne, and reclaims the guilty from the ways of transgression.

The number of convicts in the State prison at Mount Pleasant is 842. The amount received for labor is $82,-260.98. The expenditures, including $4,928.73, for the transportation of convicts and materials for the prison for females, are $64,167.97, leaving a surplus of $18,093.01. The prison for female convicts, an institution required by

[4] By chapter 200, passed April 18, the New York Institution for the Blind was authorized to receive eight additional pupils from each Senate district, and the same act appropriated $15,000 to be used in the construction of new buildings. The institution was also authorized to receive from the city of New York a ratable proportion of the common school fund according to the number of its pupils without regard to age. Following the Governor's suggestion, the superintendent of common schools (secretary of State) was authorized to visit and inspect the institution in all its departments.

the humane spirit of the age, will be speedily completed. The plan contemplates separate apartments for seventy-two of this class of convicts, a very small number in comparison with that of the other sex, but happily for our State, and honorably for the character of woman, a number greater than any for which the State has ever been called to provide. The number of convicts in the prison at Auburn is 636. The earnings during the year were $49,126.56. Its expenditures $58,363.42. Extensive repairs are required in this prison, and some alterations would be expedient.

The number of convicts received at both prisons in the year 1832 was 471; in 1833, 412; in 1834, 446; in 1835, 441; in 1836, 365; in 1837, 520; in 1838, 444. Crime has not increased in the same ratio as population. The number of convicts received in the prisons in 1837, a year memorable for its pecuniary embarrassments, exceeds that of any other in the series. Increase of prosperity diminishes the amount of crime. The proportion of colored persons in the State to that of white persons is 1 to 48. The proportion of colored persons in the State prisons is about 1 to 6. This class of our population is in a great measure deprived by its condition of the advantages of our schools. It is respectfully submitted whether a solicitous regard for the public welfare, justice to an injured race, and the dictates of an enlightened humanity, do not require us to provide more effectually for their education.

All institutions of government are imperfect, and subject to the law of improvement. Despotism denies this. It holds that institutions are complete and that laws are wise, because they are old. It maintains error is sanctified by prescription and compels the submission which renders it invulnerable. A different principle prevails in America. Antiquity has a shrine and worship in all lands but this. We have learned, that as the intelligence of the people increases, the power of the government may safely be

abridged; that error must be separated from our institutions before it becomes inseparable; and that the best laws, unless modified according to the ever varying condition of society, operate injuriously or fall into disuse. I shall, therefore, in the discharge of the duty enjoined by the Constitution, freely submit for your correction, any errors and abuses which may seem to exist in our laws, carefully excluding the discussion of those parts of our system which experience has approved.

Every other vice of government is more endurable than delay in the administration of justice. Yet this is the vice that most easily besets republican institutions. Our courts of common pleas have the constitution, forms and ceremonies of courts of civil jurisdiction, but exercise few of their important functions, and enjoy little of the respect and confidence indispensable to their efficient action. With jurisdiction co-extensive with the county as to persons, and unlimited in regard to the value in controversy, possessing ample means to secure impartial trials, and plenary powers to execute their judgments, these courts are too often deserted by all suitors, except those who bring to their bar unimportant and trivial complaints.

The supreme court is unequal to its responsibilities. Professional ingenuity, stimulated by the litigious passions of parties, and encouraged by the laws' delay, seeks error in every stage and form, from mesne to final process. Causes in that court have frequently cumbered its calendar two years.

Suitors in the court of chancery encounter even greater hindrance and delay.

These evils are incidents of our judicial system. Rights of property are of little worth when their proprietor must be ruined by delay in establishing them, or death or insolvency defeats his remedy. Delays of justice are not less demoralizing, than injurious to commercial confidence and destructive of enterprise. The ability of judges to decide

deliberately such causes as they examine, is impaired by the pressure of a mass of business which they entertain no hope of accomplishing. In presenting this subject, I am sustained by the frequent, earnest and enlightened suggestions of my predecessor. It is conceded that there are no adequate remedies for these evils without amendment of the Constitution.[a] You will, probably, deem it expedient to provide for abolishing the office of circuit judge, to increase the number of judges of supreme court, and require all its members to try issues of fact at nisi prius as well as issues of law at bar; to organize a superior court of common pleas, with concurrent civil jurisdiction, and powers co-extensive with those of the supreme court; and to reorganize the court of chancery with such addition of chancellors as shall be necessary to decide originally all causes to be brought in that court. There is an argument of greater force than that of convenience, for dividing the power and responsibilities of the chancellor. The very nature of the controversies which come before him, requires the collision of thought afforded by a judicial bench. The powers of the court of chancery are too vast, and its patronage too great, to be vested in a single individual without other responsibility than that provided by the Constitution. The boundaries of its jurisdiction are more obscure than those of other courts, and its process more searching and potential.

If you desire to restore to the courts of common pleas the popular respect, the consciousness of dignity and capabilities of usefulness which are indispensable to the efficient administration of justice, it is respectfully recommended to relieve the judges from their responsibilities in the appointment of county treasurers, commissioners of deeds and superintendents of county poor houses. Experience has proved nothing if it remains doubtful whether judges

[a] Const. 1821, Art. 5.

ought to be compelled to be partisans. Democracy is a fallacy if the supervisors are incompetent to appoint the disbursing officer of taxes which it is their province to levy, or without the intervention of executive beneficiaries, to select men qualified to administer oaths, or persons honest enough to superintend the affairs of an almshouse.[5]

The fees of the clerks of the supreme court, and the register, assistant register and clerks of the court of chancery, were graduated upon a scale supposed to be necessary to secure them an adequate compensation. But it is complained that the amount of these perquisites exceeds the value of the services rendered. Judges of the supreme court have descended from the bench to enjoy the golden streams supposed to flow into these offices. Integrity and assiduity are required in all public employments. Besides these, the incumbents of those offices ought to possess the skill merely clerical, and scarcely more than mechanical, to record and certify in set forms and technical words ever recurring, the proceedings of their respective courts. To demand from litigants an exorbitant compensation for such services, is as unjust as extortion in any other form. To lavish it upon public favorites is anti-republican, wasteful and demoralizing; and yet if the complaints alluded to are true, this is not merely permitted by law, but enforced in the name and with the sanction of justice. It is universally admitted that popular governments ought to be economically administered; but it cannot be too well understood that our State government, like that of the Nation, constantly manifests a tendency to depart from this principle.

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[5] Several constitutional amendments relating to the judiciary were proposed and considered, but none were adopted by both houses. By chapter 100, passed March 27, provision was made for the appointment of a vice-chancellor for the eighth judicial circuit. Chapter 101, passed March 27, authorized the appointment of an assistant vice-chancellor for the first circuit. The act of 1838, relative to trial by jury and the court of chancery, and as to the method of taking testimony in other cases, was repealed by chapter 317, passed May 2, which included other provisions on these subjects.

I submit to your enlightened consideration, that this tendency can only be counteracted by the substitution of fixed salaries instead of perquisites, where it is practicable, and by limiting the compensation of public officers. Artful devices are framed, and changes of form adopted, to increase the frequency of occasions to demand fees. Of necessity it is difficult to ascertain the aggregate amount received, and the increase of business in every department, deranges the most nicely adjusted scale of compensation. Interested partisans or generous advocates for extravagant compensation to public officers, are never wanting, and plausible arguments are always at their command. The indigence of the incumbent, the supposed dependence of his family, the necessity of maintaining a certain rank, are arguments which easily satisfy those who see in the question only two points, the want of the officeholder, and the abundance of the Government. All such arguments, however, are inconclusive, because they admit unlimited compensation. The only true rule is, that the State, like an individual, must pay, for services rendered, the amount necessary to secure the requisite skill, industry and ability; and the test of compensation must be, whether public offices are declined by qualified persons, on the ground of its inadequacy. Your investigation may be properly extended to the various offices of county clerks, registers, surrogates, notaries, and commissioners to perform certain duties of judges of the supreme court.[6]

The public service is not to be regarded as a profession. The healthful action of our whole system depends upon the responsibility and frequent change of agents. He is as much a pensioner who receives a compensation exceeding the value of his services as one who receives a gratuitous allowance from the public treasury. Of pensioners, this country ought to know only those whose reward is a stinted

[6] The fees of clerks of the supreme court, register, assistant register and clerks in chancery were regulated by chapter 388, passed May 7.

requital for perils, privations and sufferings, in the achievement and defence of our liberties, which happily exempt them from all competition.

In the various transactions of commerce there may sometimes be occasion for the intervention, between buyer and seller, of an experienced person to test the quality of an article of merchandise; but I think you will find this principle has been unnecessarily extended. I am quite certain you will find individuals in the humble offices of inspectors of productions and merchandise, quietly enjoying such a rapid accumulation of fortune by perquisites, as would shock the republican feelings of the country, if paid to judges or legislators of transcendent abilities and learning. You will relieve agriculture and commerce of unnecessary burthens, and rightfully diminish the patronage of the Executive, by reducing the number and emoluments of these officers.[7]

An exception in our statute, concerning the foreclosure of mortgages, renders it necessary to resort to the court of chancery to extinguish the equity of redemption of subsequent mortgagees and judgment creditors. Stimulated by cupidity, many persons carry into that court cases in which a foreclosure in pursuance of the statute, would be equally effectual. Foreclosures in chancery are always expensive, and often oppressive. I submit this grievance as one which has been the subject of just and general complaint.[8]

I am persuaded I only follow the expressed opinion of the people in declaring that the law prohibiting the banks

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[7] The Governor's recommendation as to inspection laws was considered at this session, but no legislation was enacted. The constitution of 1846, article 5, section 8, abolished nearly all inspection offices.

[8] The next year, 1840, an act was passed, chapter 342, to reduce the expenses of foreclosing mortgages in the court of chancery. The chancellor was required to devise a short form of a bill for foreclosure. The act also prescribed the fees of officers, lawyers and others, contained provisions relative to necessary parties, and declared the effect of a decree of foreclosure.

from issuing bills of a lower denomination than five dollars, is unwise, and has been productive of manifold and serious inconveniences. The act passed by your predecessors, suspending its operation two years, is not satisfactory. I therefore recommend that this suspension be converted into an unconditional repeal.[9]

The experimental policy of the Federal Government in regard to its finances has not only produced calamitous measures at Washington, but has stimulated or seemed to demand extraordinary legislation on the part of the States. Among our laws passed in consequence of that policy, were the act prohibiting the issue of small bills by our banks; that removing penalties for a suspension of specie payments, which fortunately expired by its own limitation; another enlarging the time of redemption on the foreclosure of mortgages, which has already been repealed; and a memorable act, happily never carried into effect, but still remaining a precedent in our statute book, delegating to certain public officers the power to borrow on the credit of the State six millions of dollars, to be loaned to individuals, and to banking institutions enjoying chartered privileges and carrying on their operations for their own profit. It would seem that sufficient time had elapsed, since the adoption of the Constitution, for the General government to determine the currency in which its taxes should be received. Permit me to express the hope that since that government has ascertained that its financial business may be conducted without a bank, it will speedily adopt some fixed and permanent system for the collection and disbursement of its revenues; a system that will neither bring our liberties into jeopardy, nor spread alarm for their security by the creation of a banking institution in any form, whether corporate or an engine of the Executive department; which will not again exact that impracticability, the payment of

[9] Chapter 30, passed February 21, 1839, repealed all former laws restricting the circulation of small bills issued by state banks.

the precious metals for duties, taxes and other revenue; nor again embarrass and derange all the operations of business by rejecting for its demands the only currency which, in the present condition of the civilized world, can be used or paid — a mixed currency of gold, silver and redeemable paper. Our great city is the center of American trade. The State, always solicitous for its prosperity, is abundantly willing and competent to provide for its moneyed interests and secure its currency against depreciation and loss. This State repels, as she ought, the suggestion that she consents to be dependent upon the policy or magnanimity of any other member of the confederacy for her currency or facilities of commerce; nor can she be incited to hostile action against any such member or its institutions. In the exercise of her constitutional sovereignty to promote the prosperity and welfare of her citizens, she asks of the Federal government to be let alone. She pays as cheerfully as liberally, the contributions exacted, but rightfully demands that the government shall consult the public interest by preventing that unfaithfulness of its financial agents which is impoverishing the treasury and staining the national character. For the rest she will, with the blessing of God and in the spirit of our institutions, depend upon herself.

Acting on this principle, the State has repealed the restraining laws and adopted a system which, establishing proper safeguards for the currency to be issued, authorizes the business of banking by associated individuals, without the special and exclusive feature of Legislative charters. Under this law, certificates have been filed by thirty-two banking associations, with an aggregate actual capital of $8,883,175. Of these, ten are located in the city of New York, and the others are distributed as follows, viz: at Rochester, Port Richmond, Buffalo, Lockport, Utica, Syracuse, Gaines, Ogdensburgh, Ithaca, Brooklyn, Ovid, Waterville, Clyde, Alexander, Le Roy, Kinderhook, Attica, and

Batavia. Circulation, amounting to $1,314,990, has been issued by the Comptroller, to thirteen of these institutions, which have deposited the securities required by law. Of these securities, the sum of $314,900 consists of bonds and mortgages, and the residue in stocks of the States of Indiana, Arkansas, Michigan, Maine, Alabama, and New York. A safer currency than this is unknown in the commercial world.

These operations are yet too recent and limited to enable us to determine the practical effects of the system. It seems certain, that with the general revival of confidence in the community, associations under this law will be multiplied, converting a mass of dormant wealth into active capital, giving new impulses to industry and enterprise, and working a mighty change in the condition of this country. In view of these consequences, I respectfully recommend a revision of the law to correct defects and guard against abuses, and especially to prevent the associations from putting into circulation the doubtful paper of the moneyed institutions of other States.[10]

The reciprocal benefits of our trade with other States, as well as the spirit of our National Union, require that no impediment, should be interposed to such a circulation of their paper as its intrinsic worth may secure in the regular course of business. But our citizens must necessarily be ill-informed of the condition of the moneyed institutions of sister States. To induce an unnatural circulation of their bills by permitting apparent or real engagements for their redemption within this State, will expose us to hazard of loss by frauds, and an enlargement of the paper currency, beyond all control of the government, banishing, at the same time, the better known and safer currency of our own institutions.

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[10] The circulation of foreign bills by state banks was prohibited by chapter 355, passed May 7.

The test of the qualifications of electors, and the form of applying it, have been found deplorably deficient in our populous cities. Notwithstanding all existing preventives and penalties, there are crying abuses of this precious right. It is violated by every vote of an unqualified person, and every such vote tends to endanger not merely the peace and prosperity of society, but the security of Republican institutions. Anarchy will surely follow the discovery that the ballot boxes are an uncertain organ of the will of the people. Conscientiously holding the principle of universal suffrage, and indulging no apprehension of its practical operation, if fairly carried out, with proper safeguards against its abuse, I am yet free to confess my fears, that it will prove a fatal franchise, unless such safeguards be applied.[11]

There have been periods of debasement when it was believed that the energies of man were unequal to greater achievement, and his character susceptible of no further improvement; that a law of necessity frustrated all efforts to increase his security or mitigate the evils of his condition; and that his destiny would be speedily completed by destruction sent from the presence of an offended Deity, upon him and the earth he had polluted. The tendencies of the present age indicate a more cheering result. The light of his intellect increases in brilliancy and reveals new mysteries to his persevering investigation. His passions become more equable and humane; his energies break through the restraints of power and prejudice, and the democratic principle leads his way to universal liberty. Froward indeed would this generation be to ask for other signs than it enjoys, that our race is ordained to reach, on this continent, a higher standard of social perfection than

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11 The act to preserve the purity of elections, chapter 389, passed May 7, contained numerous provisions relative to the elective franchise, including ballots, methods of voting, qualifications of voters, general and local elections, bribery and the conduct of elections.

it has ever yet attained; and that hence will proceed the spirit which shall renovate the world. The agency of institutions of self government is indispensable to the accomplishment of these sublime purposes. Such institutions can only be maintained by an educated and enlightened people. It requires national wealth to dispense effectually the blessings of science, and social ease and independence, to produce a desire for their enjoyment. But education and national prosperity are reciprocal in their influence. If it were asked why knowledge is generally diffused among the American people, the answer would be because wealth is more generally diffused. And if it were inquired why the solaces and enjoyments of life are found in our dwellings, the reply would be that it is because education has been there. The augmentation of both prosperity and knowledge may be indefinite, and the security of republican institutions be constantly increased, if that augmentation be impartially distributed. The spirit therefore that pervades our country and animates our citizens to seek the advantages of competence, is to be cherished rather than repressed. It resists the inroads of aristocracy and demolishes all its defences. It annihilates the distinctions, old as Time, of rich and poor, masters and slaves. It banishes ignorance and lays the axe to the root of crime.

To enlarge, therefore, national prosperity, while we equalize its enjoyments and direct it to the universal diffusion of knowledge, are the great responsibilities of our age. Out of these responsibilities arise the systems of internal improvement and education.

Our country is rich, beyond all she now enjoys, in latent, unappropriated wealth. The minerals within the earth are not more truly wealth hidden and unused, than the capabilities of its surface to yield unmeasurable fruits to sustain the steps and gladden the hearts of the children of men. Emigration tending westward with constantly in-

creasing numbers manifests the resources of native labor we possess to render these capabilities productive. There is another resource which is ours, neither by inheritance, nor by purchase, nor by violence, nor by fraud. It is the labor, the incalculable surplus labor of the European States. This is wealth, and the moral energies of those who bring it hither are an element of national greatness. They come to us under the same law which controlled the colonists in their emigration and settlement here. They force themselves upon us even though we inhospitably resist them. The surplus capital of Europe, too, is seeking our shores with the same certainty and in obedience to the same law. Anathematized though it be from our high places, and denounced by those who, removed by fortune beyond the general necessities, desire to maintain the power derived from what remains of inequality in our social condition, it still flows unseen over our land, and abounding prosperity vindicates its presence and its usefulness.

This tide is now acquiring increased volume and velocity from the reduction of the distance between the two continents by Atlantic steam navigation. They who would roll it back, must change not merely the relations existing between this country and Europe, but the condition of society on both continents. They must reinvigorate the energies of Europe, substitute democracies for her thrones, and religious toleration for her hierarchies. They must subvert the institutions, and break down the altars of liberty in America, arrest the prosperity of the nation, deprive enterprise of its motives, and deny to labor its rewards. If all this is not done, the settlement of our western regions will go on; new states will demand admission into the Union; their trade and commerce will continue to augment our wealth; and their citizens, no matter whence they spring, to claim us as brethren. If the energies of the new States already planted adjacent to the

shores of the lakes be seconded and sustained by a wise and magnanimous policy on our part, our State, within twenty years, will have no desert places — her commercial ascendancy will fear no rivalry, and her hundred cities renew the boast of ancient Crete. The policy of this State includes every measure which tends to develop our own resources, or those of the regions which can be made tributary to our commerce, and every measure which invites the labor and capital of Europe. It requires that we welcome emigrants among ourselves, or speed them on their way to a western destination, with all the sympathy which their misfortunes at home, their condition as strangers here, and their devotion to liberty, ought to excite. If their inclination leads them to remain among us, we must assimilate their principles, habits, manners and opinions to our own. To accomplish this, we must extend to them the right of citizenship, with all its inestimable franchises. We must secure to them as largely as we ourselves enjoy, the immunities of religious worship. And we should act not less wisely for ourselves, than generously toward them, by establishing schools in which their children shall enjoy advantages of education equal to our own, with free toleration of their peculiar creeds and instructions.

Thirteen years experience has proved the inadequacy of all our thoroughfares for the transportation of persons and property between the frontier and tide-waters. It is submitted whether sound policy does not require that the enlargement of the Erie Canal be completed as speedily as will be consistent with the public convenience. This generation may as well participate in its manifold advantages as resign them. The loss of interest upon partial expenditures during a long term of years, is an item not unimportant; and the expenses of transhipment and other inconveniences resulting from the navigation of different parts of the canals with boats of different forms and magnitude, are auxiliary arguments to prove that the

public interest requires the earliest feasible enjoyment of the cheapness and expedition of the improved navigation.

The year 1838 has been signalized by the momentous confirmation of the highest hopes excited by the successful application of steam power to the propulsion of boats. But this wonderful agent has achieved, almost unobserved, a new triumph, which is destined to effect incalculable results in the social system. This is its application to locomotion upon the land. Time and money are convertible. Husbandry of the one is economy of the other, and either is equivalent to the economy of labor. Railroads effect a saving of time and money; and notwithstanding all the incredulity and opposition they encounter, they will henceforth be among the common auxiliaries of enterprise. Happily, it is not in our power to fetter the energies of other States, although we may repress our own. This useful invention, like all others, will be adopted by them, although it gain no favor with us; and they who are willing that New York shall have no railroads, must be ready to see all the streams of prosperity seek other channels, and our State sink into the condition of Venice, prostrate and powerless, among the monuments of her earlier greatness.

A glance at the map would render obvious the utility of three great lines of communication by railroads, between the Hudson River and the borders of the State. One of these would traverse several of the northern counties, and reach with its branches to Lake Ontario and the St. Lawrence. A second, keeping the vicinity of the Erie canal, would connect Albany and Buffalo. A third would stretch through the southern counties, from New York to Lake Erie.

It is certain that neither one nor two of these improvements would accomplish the useful ends of all, and when the growing wealth and importance of the several regions directly interested in these improvements are considered, it is not less clear, that however delayed, all must eventu-

ally be completed. It remains then to be decided whether it is wiser to regard them as rival enterprises, each by the operation of local jealousies hindering and delaying the others, or whether all shall be considered as parts of one system, and equally entitled to the consideration and patronage of the State.

Capitalists have conceived not only the usefulness, but the productiveness of the central route, and notwithstanding the adverse influences of the recent pressure, have accomplished one half of the whole undertaking. The public defence may sometime demand, and the public convenience already requires, as great a reduction of the distances as possible between our commercial metropolis, the capital of the State, and the populous cities and long line of flourishing villages of the west.

The attention of far-seeing and patriotic citizens was early directed to the route through the southern counties. That enterprise has been commenced and prosecuted by an association with commendable perseverance, under circumstances most embarrassing, resulting not only from the same commercial revulsion, but also from the magnitude of the undertaking, which exceeds that of any work of internal improvement ever completed, except the Erie canal. Legislative aid, in the form of loans, has been granted to both the central and southern roads.

I earnestly hope that you will inquire into the condition and prospects of both of these undertakings, and bestow a careful examination upon the conduct, management and resources of the associations engaged in their construction; and, assuming the principle that there is neither economy nor wisdom in procrastination, adopt such measures as will secure their completion without delay.

The advantages and claims of the various projects for the northern line, including those of two distinct and entire routes, are yet under discussion. The whole subject merits, as I doubt not it will receive, your dispassionate considera-

tion. I have only to add, in regard to this improvement, that I know no reason for delay when the most feasible and advantageous plan is ascertained. I shall cheerfully concur in any measures you may adopt to secure to that flourishing and hitherto neglected part of the State, an early and full participation in the benefits of our system of internal improvements.

I have called your especial attention to three great projects of improvement, because their routes, extending from the borders of the State to tide water, are obviously designed to accommodate large and important divisions of our population; to open to the reach of labor and capital extensive regions of the State which, whatever may be their present prosperity, have scarcely begun to disclose their resources. They are important parts of a system of public defence which it is wise to have always in view, and certain to become thoroughfares of the boundless internal trade to be carried on with the western States and British America. They are therefore works of great importance to the whole State, and entitled to be regarded as arteries in that great system of internal improvements which an enlightened and prophetic vision of the future wealth and resources and relations of the State would have suggested, while its solitudes were yet untrodden by civilized man. They deserve to be classed with those parts of the same great system already completed, or in process of construction — the Erie and Champlain, the Oswego, the Seneca and Cayuga, the Chenango and Chemung, the Genesee Valley and the Black River canals; and if their completion cannot speedily or advantageously be effected otherwise, like them they ought to be constructed at the expense of the State.

Nature, never jealous of our co-operation, supplies us with resources and facilities, but presents few of her works finished for our immediate use. Thus she leaves us incentives to invention, and scope for action, while she seldom

fails to indicate the right direction for effort. The policy of our State is so legibly written upon its surface that to err in reading, or to be slothful in pursuing it, is equally unpardonable. The ocean reaches through the tide waters of the Hudson far inland. The lakes and reservoirs within our bounds, as well as the seas upon our borders, were designed to fill the artificial channels we have constructed as tributaries to our noble river. It is a policy even more obvious to maintain the natural uses of the river itself, and to perfect every feasible branch of its navigation. This is only to secure a natural and full circulation in the heart, while we are diffusing it to the extremities of the system. I congratulate you upon the success which attends the efforts of the general government in removing the obstructions in the vicinity of Albany. The prosecution of this enterprise, although carried on by that government, will constantly deserve and perhaps may, as heretofore, require your attention. I respectfully commend, as a part of the same policy which devolves peculiarly upon the State legislature, the improvement of such of the northern branches of the Hudson as are capable of being rendered navigable. The settlement of the public lands of the State would be facilitated, and large portions of our fellow citizens accommodated by this improvement.[12]

There are other projects, both of railroads and canals, of less magnitude, many of which, however, embrace wide and important interests, and whose accomplishment would largely promote the public convenience and advance the public good. It would be invidious to discriminate among these projects in a communication which does not admit the discussion of their merits. Internal improvement re-

12 By chapter 323, passed May 3, the canal board was directed to make a survey and procure an estimate of the expense of constructing a canal along the middle branch of the Hudson River from North Creek to the High Falls at Corinth; also a canal along the west of Sacandaga branch from Murphy's Mills in Northampton to the said falls, thence by the most eligible route to the Erie or Champlain canal.

gards the highest possible cultivation of every part of the State, and the perfect evolution of its resources; the widest possible extension of the territory which can be made tributary to its markets, and the greatest possible diminution of the cost of transportation of persons and property; and consequent increase of population and labor, and diminished cost of production. All such improvements, therefore, rightfully engage the public attention, and will doubtless receive from the Legislature the discriminating favor due to their respective merits.

Taxation for purposes of internal improvement is happily unnecessary as it would be unequal and oppressive. The founder of the system had always in view its prosecution to the full extent consistent with the physical formation of the State, although the invention of railroads was unknown or partially understood by him, and consequently the manner in which the system was to be carried forward, was unforeseen. He asserted most truly, that the argument for such a system was not a mere question of dollars and cents — that its revenues were unimportant compared with its more general, more enduring and more beneficent results; the continual advance by millions in the value of real estate; the increase in quantity and value of agricultural productions and manufactured fabrics; the establishment and enlargement of inland commerce, and the swelling of foreign trade; economy in the expense, saving of time, and increase in amount of travel; augmentation of population; the unbounded prosperity and increase of rising villages, cities and towns; and all the consequent advantages to morality, piety and knowledge. But he maintained that independently of all these results, the interests of the State in regard to the mere question of revenue, required the prosecution of the system. Freely conceding that there must be parts which would not immediately, and some which would never yield a revenue equal to the cost of their construction, he maintained that they

might yet be admitted as tributaries to the greater channels; and that the aggregate revenues of all would defray the entire cost of construction, and yield a surplus large as the munificence which a republican government ought to bestow upon institutions of charity and education. It is history now that these enlarged and comprehensive views were by no means generally sustained; that his magnanimous efforts to enlarge the wealth, promote the happiness, and elevate the frame of his native State, were resisted by a policy which regarded his glowing anticipations as visionary, and the entire system fraught with intolerable taxation and ruin; that this antagonist policy early became ascendant, and the several enterprises since undertaken have been hard-won triumphs over the prevalent convictions of the Legislature.

Fortunately this momentous question is decided. The present resources and credit of the State show that the most ardent advocates of the system failed altogether to conceive the vast tribute which it has caused already to flow into the treasury.

I respectfully refer you to a report of a committee of the last House of Assembly, in which this subject is discussed with eminent ability, and which results in showing that the canals are a property substantially unincumbered; that their productiveness would warrant the State in expending in internal improvements $4,000,000 annually during a period of ten years; and that the revenues of the canals alone would reimburse this expenditure previous to the year 1865. This sum far exceeds any estimate of the expense required to complete the entire system, while it is not to be doubted that the parts yet to be constructed will eventually be productive of revenue. The conclusions of this report, although of vast interest to the State, and, I trust, decisive of its policy, have not been questioned.[13]

[13] Several new canals were projected and surveys ordered at this session. Some of the canals were afterwards constructed, but many of them were not.

The following is a brief statement of the entire indebtedness of the State at the close of the last fiscal year.

DEBT OF THE GENERAL FUND.

Loaned at 5 per cent, Astor stock	$561,500.00
Loaned at 5 per cent, Bank Fund	586,532.43
Loaned of the Canal Fund, without interest	800,000.00
Total debt of the General Fund	$1,948,032.43

CANAL DEBT.

Erie & Champlain canal debt	$1,711,314.12 at 5 per cent.		
		548,520.53 at 6 per cent.	
Oswego canal	421,304.00		
Cayuga and Seneca Canal	237,000.00		
Chemung	316,000.00		
Crooked Lake	120,000.00		
Chenango	2,362,535.66		
Black River canal	591,446.10		
Genesee Valley canal	2,000,000.00		
Enlargement of the Erie canal	1,000,000.00		
Total of the 5 per cent	$8,759,599.88		
Total of the 6 per cent		$548,520.53	
		8,759,599.88	
			9,308,120.41
Total State Debt			$11,256,152.84

But there is a surplus on hand sufficient to pay the Erie and Champlain canal debts.		$2,259,834.65
There was on hand 30th of September last, of the moneys borrowed for the Chenango Canal	$36,801.21	
The Black River canal.....	490,282.77	
Genesee Valley canal	1,740,546.95	
		2,267,630.93
		$4,527,465.58
Balance of State debt over funds on hand		$6,728,687.26

It will be noticed that the temporary loans made by the Comptroller to meet the current demands, do not enter into this statement; nor do the State stocks issued to sundry railroad companies, in pursuance of the laws passed at the last session of the Legislature. The issue of these stocks is regarded as a loan of the credit of the State upon undoubted security.

The construction of the canals of this State has been carried on chiefly with funds derived from loans. The whole amount borrowed is about fifteen millions; the balance of the debt for their construction is less than five millions; and the Erie and Champlain Canal Fund alone, it has been seen, yields a net revenue, after paying all legitimate charges upon it, and all deficiencies of the auxiliary canals, of $718,650.91.

History furnishes no parallel to the financial achievements of this state. It surrendered its share in the national domain, and relinquished for the general welfare all the revenues of its foreign commerce, equal generally to two-thirds of the entire expenditure of the federal government.

It has nevertheless sustained the expenses of its own administration, founded and endowed a broad system of education, charitable institutions for every class of the unfortunate, and a penitentiary establishment which is adopted as a model by civilized nations. It has increased four-fold the wealth of its citizens, and relieved them from direct taxation; and in addition to all this has carried forward a stupendous enterprise of improvement, all the while diminishing its debt, magnifying its credit, and augmenting its resources.

This cheering view of our condition ought to encourage neither prodigality of expenditure nor legislation of doubtful expediency. All appropriations for purposes of internal improvement ought to be made with a view and constant purpose to call into co-operation individual capital and enterprise. Rigid economy ought to be enforced, and perfect accountability exacted, in this as in every other department of the public service.

Action is the condition of our existence. Our form of government chastens military ambition. The action of the people must be directed to pursuits consistent with public order and conducive to the general welfare. Our country will else be rent by civil commotions, or our citizens will seek other regions, where society is less tranquil, ambition enjoys greater freedom, enterprise higher motives, and labor richer rewards.

We are required to carry forward the policy of Internal Improvement, by the abounding experience of its benefits already enjoyed; by its incalculable benefits yet to be realized, by all our obligations to promote the happiness of the people, to multiply and raise their social enjoyments, to maintain the fame of the State, inestimably dear to its citizens; to preserve the integrity of the Union, and by the paramount duty we owe to mankind, to illustrate the peacefulness, the efficiency, the beneficence and the wisdom of Republican institutions.

That legislation is unwise which is exclusively devoted to enterprises of great moment, and overlooks measures of obvious but common utility. The present condition of our highways has resulted from the necessity of constructing roads over an extended surface, with the scanty means and efforts of a sparse population. But this inconvenience has in a great measure ceased to exist. The labor expended upon our highways is a grievous tax, and yet our roads are scarcely improved. Their summer repairs accomplish little more than restoring them to the condition they maintained before the injuries of the winter season occurred. The evil lies in a misapplication of the labor assessed. Your experience in regard to this subject is sufficient to convince you of the necessity of reform, as well as to suggest the most effectual measures for its accomplishment.

Union College continues to maintain its high rank among the literary institutions of our country. It has three hundred students. Within the last ten years, eight hundred and seventy-four persons have received from its faculty their first degree in the arts.

The College at Geneva enjoys scenery and associations eminently congenial to literature, and is happily located in regard to its sphere of usefulness. It is already beginning to justify the long delayed and limited public favor it has received. Its number of students is fifty, being an increase of forty within two years.

Hamilton College is surmounting the embarrassments with which it has so long struggled, and gives gratifying promise of renewed usefulness.

Columbia College, in the city of New York, contains one hundred and fifty-seven students, which is an increase of twenty-seven over the number of the preceding year. None of our scientific institutions have more faithfully and perseveringly maintained their standard of preparatory qualification, more diligently discharged the duties of instruction, nor sent into public life men of more eminent abilities,

sound learning and elevated patriotism, than this ancient and venerable institution. It was excepted from the legislative patronage bestowed at the last session. Is it not both wise and just to admit it to an equality with other institutions?

In reference to all our collegiate institutions, it affords me pleasure to state that their usefulness has been increased, and their prospects are more auspicious than heretofore.

There are one hundred and forty-six incorporated academies, seventy-nine of which are subject to the visitation of the Regents of the University, and participate in the distribution of the Literature Fund. The act of 1837 renders the terms of admission to these advantages so easy, that it is probable all will soon be placed on the same basis. The number of students in the academies subject to visitation is about ten thousand, and the number in all the academies in the State is estimated to exceed fifteen thousand. The sum to be annually distributed hereafter, is $40,000, being an addition of $28,000 to the previous annual appropriation.

There are ten thousand five hundred and eighty-three organized common school districts in the State, of which nine thousand eight hundred and thirty have maintained schools during an average period of eight months within the last year. The number of children between the ages of five and sixteen in the school districts, is five hundred and thirty-nine thousand, seven hundred and forty-seven, of whom five hundred and twenty-eight thousand, nine hundred and thirteen received instruction in the common schools within the year.

The colleges, academies and common schools constitute our system of public instruction. The pervading intelligence, the diminution of crime, the augmented comforts and enjoyments of society and its progressive refinement,

the ascendency of order, and the supremacy of the laws, testify that the system has been by no means unsuccessful in diffusing knowledge and virtue.

It must nevertheless be admitted that its efficiency is much less than the State rightfully demands, both as a return for her munificence and a guaranty of her institutions. Some of our colleges and academies languish in the midst of a community abounding in genius and talents, impatient of the ignorance which debases and the prejudices which enslave. The common school system, but partially successful in agricultural districts, is represented as altogether without adaptation to cities and populous villages. The standard of education ought to be elevated not merely to that which other States or nations have attained, but to that height which may be reached by cultivation of the intellectual powers, with all the facilities of modern improvements, during the entire period when the faculties are quick and active, the curiosity insatiable, the temper practicable, and the love of truth supreme. The ability to read and write, with the rudiments of arithmetic, generally constitute the learning acquired in common schools. To these our academies and colleges add superficial instruction in the dead languages, without the philosophy of our own; scientific facts without their causes; definitions, without practical application; the rules of rhetoric, without its spirit; and history, divested of its moral instructions. It is enough to show the defectiveness of our entire system, that its pursuits are irksome to all except the few endowed with peculiar genius and fervor to become the guides of the human mind, and that it fails to inspire either a love of science or passion for literature.

Science is nothing else than a disclosure of the bounties the Creator has bestowed to promote the happiness of man, and a discovery of the laws by which mind and matter are controlled for that benignant end. Literature has no other object than to relieve our cares and elevate our virtues.

That the pursuits of either should require monastic seclusion, or be enforced by pains and penalties upon reluctant minds, is inconsistent with the generous purposes of both. Society cannot be justly censured for indifference to education, when those who enjoy its precious advantages manifest so little of the enthusiasm it ought to inspire. All the associations of the youthful mind, in the acquisition of knowledge, must be cheerful; its truths should be presented in their native beauty, and in their natural order; the laws it reveals should be illustrated always by their benevolent adaptation to the happiness of mankind; and the utility and beauty of what is already known, should incite to the endless investigation of what remains concealed. If education could be conducted upon principles like these, the attainments of our collegiate instruction might become the ordinary acquirement in our common schools; and our academies and colleges would be continually enjoying new revelations of that philosophy which enlightens the way, and attaining higher perfection in the arts which alleviate the cares of human life.

If these reflections seem extravagant, and the results they contemplate unattainable, it need only be answered that the improvability of our race is without limit, and all that is proposed is less wonderful than what has already been accomplished. To the standard I have indicated, I hesitate not to invite your efforts. Postponed, omitted and forgotten, as it too often is, amid the excitement of other subjects and the pressure of other duties, education is nevertheless the chief of our responsibilities. The consequences of the most partial improvement in our system of education will be wider and more enduring than the effects of any change of public policy; the benefits of any new principle of jurisprudence, or the results of any enterprise we can accomplish. These consequences will extend through the entire development of the human mind, and be consummated only with its destiny.

We seem at last to have ascertained the only practicable manner of introducing Normal schools into our country. It is by engrafting that system upon our academies. I ardently hope you will adopt such further legislation as is required to make this effort successful.[14]

Provision has been made for the establishment of school district libraries. If I do not greatly err, this cheap and easy mode of bringing into contact with the juvenile powers the discoveries of science and the mysteries of the arts, will be the era of a new impulse to the cause of education. The common schools may resist every other influence, but they cannot withstand that of the general improvement of the community. I cannot too earnestly solicit your co-operation in the beginning of this wise and momentous policy.[15]

Visitation is the very principle of life to all seminaries of instruction. It acts upon both instructors and pupils by all the incentives which excite, and all the motives which encourage emulation. It would, if carried into effect, call to the aid of the State, in this mighty interest, the ally at once the most natural and efficient, parents themselves. The Regents of the University, are by virtue of their office visitors of the colleges and academies, and inspectors are the legal visitors of common schools. How utterly this duty of visitation has fallen into disuse, your own observation and the public voice abundantly testify. The office of inspector of common schools is unhappily always involved in the political organization of parties. Generally it falls, by custom strong as law, upon young men engrossed by private affairs. Its duties confer, in public estimation, nothing of the dignity, and maintain little of the importance, which would induce their faithful execution. For this evil of our whole system, there is a remedy,

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14 There was considerable legislation concerning schools and academies, but it related chiefly to matters of detail and particular institutions.

15 Library administration was provided for by chapter 177 passed April 15, including trustees, acquisition of books and supervision by the superintendent of common schools.

simple, economical and effectual — the establishment of a department of education, to be constituted of a superintendent appointed by the Legislature, and a board to be composed of delegates from subordinate boards of education to be established in the several counties. The State board might exercise a general supervision, with powers of visitation of the colleges, and the county boards the same power in their respective counties. The duties of all these officers, except the superintendent, ought to be discharged without compensation, and the tenure of office might be made so long as to ensure efficiency. I am satisfied the State abounds with competent individuals who would assume those duties without other remuneration than the consciousness of rendering enlightened and patriotic service in the cause of education.

The science which involves the physical laws most open to our investigation, and to which the primeval law of our existence compels us, and the art which precedes all other inventions, and whose cultivation leads to plenty, and is cheered by health and contentment, are the last which receive the patronage of philosophy, or attain the favor of government. Mankind learned the distances and laws of planets, and even the periods of comets, before they conceived the mysteries of vegetation; and the fine arts were perfected in ages when agriculture, loaded with the superstition of centuries, was consigned to slaves. That this should have been the experience of other ages and other countries is easily explained. The powers of government have always been vested in classes or individuals farthest removed from the tillers of the soil; and ambition and pride have sought gratification in conquests and in the homage of the fine arts. But it must not, it cannot be so here, where the agricultural interest is sovereign, and as it furnishes all the means, rightfully supplies the motives, and directs the action of the government.

Every acre of cultivated land could be made to yield, with the expense now bestowed upon it, products exceeding by one third in quantity and value its present fruits. The diffusion among the cultivators of the earth of the science belonging to their art would enlighten their minds, enlarge their views, elevate their motives, and refine their sentiments. Let it be well remembered, that all this is necessary if we would not see the power residing with them steal away, as has always before been the case, to other classes, whose pursuits secure intellectual cultivation and superior wealth. Agriculture appeals to us as republicans, therefore, with peculiar earnestness, not only by our desire to increase the public wealth, enlarge the public intelligence, and elevate the standard of public virtue; but as we would preserve the ascendancy of that policy of peace and improvement identified with the existence of democratic institutions.

Among the plans of improvement which have been suggested, is the formation of a Board of Agriculture. I respectfully commend it to your favorable attention. Such a board might be usefully employed in introducing new species and varieties of productions, and improvements in implements of husbandry, and in carrying on a general correspondence with a view to promote the interests of agriculture.

I submit also whether it would not be well to require that a popular treatise upon agriculture should be contained in the district school libraries; and whether legislative sanction and patronage could not be so extended as to encourage the organization of agricultural societies, free from the defects which have hitherto proved fatal to their permanency and success.

It is now eleven years since this State was suddenly called to mourn the death of a citizen, who illustrated her history by a life of eminent public usefulness. His death happened in the maturity of his manhood, and while yet

the wisdom of his policy and the purity of his motives were loudly questioned. Experience has more rapidly than the almost inspired enthusiasm of his genius anticipated, sanctioned the one, and posterity has made extraordinary haste to vindicate the other. His remains still rest in that vault of a private friend which hospitably received them as a sacred trust until an auspicious period for more fitting public obsequies should arrive. He is understood to have left to his children no inheritance but what they enjoy in common with all their fellow citizens — his fame and abounding public prosperity. The custom of honoring the dead commends itself to the natural sentiments of mankind, and although in ignorant and depraved countries it has been abused by the erection of pyramids, and temples, and tombs, to preserve the ashes of tyrants, it cannot, among an enlightened people, be otherwise than right and expedient to perpetuate the memory of public benefactors, and thus stimulate and encourage emulation of their deeds. Our State early followed the good example, by providing a tomb for the ashes of a gallant soldier who fell in her service in a foreign land.* It cannot be too often remembered or practically illustrated, that worthy as military renown is of posthumous honors, civic virtues less frequently attain their just reward; that statesmen pass an ordeal more trying than the field of battle, and that the history of this State records the fame of many valiant generals, while it has witnessed only one personification of the genius and virtues of De Witt Clinton. I therefore respectfully recommend that the ashes of that illustrious citizen be deposited underneath a monument to be erected in this city.[16]

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* For an account of the removal of the remains of General Richard Montgomery from Quebec to New York see *ante*, vol. 2, pp. 987, 999–1002.

16 An assembly committee presented on the 15th of February a report, in which the public services of De Witt Clinton were recounted in the most eulogistic terms, and which concluded by recommending the enactment of a law providing for a monument to his memory.

The blessing of that Almighty Being, in contrast with whose power states and empires are but dust, and in the light of whose wisdom all human counsels are darkness, I invoke upon your deliberations for the public good.

WILLIAM H. SEWARD."

Albany, January 1st, 1839.

SPECIAL MESSAGES.

January 3. To the Assembly: Transmitting a resolution adopted by the Legislature of Connecticut, proposing an amendment to the federal Constitution "whereby the power of nominating, appointing or removing any officers of the United States, except officers naval and military, ambassadors, public ministers and consuls, shall not appertain to the office of President of the United States, but be vested and exercised in some other manner, as may be specified in such amendment or prescribed by law."

January 3. To the Assembly: Transmitting the annual report of the Adjutant General.

January 4. To the Assembly: Transmitting resolutions adopted by the Legislature of Connecticut, declaring that "the public lands belonging to the United States are the common property of all the states, and the proceeds of them should be appropriated to their use and benefit, and to no other purposes whatever without the consent of the states respectively," protesting against the cession of any land to a state in which it may be situated at a price less than that at which it is offered in the market; and also protesting against pre-emption laws and grants under the authority thereof, and recommending a division of the proceeds of the public lands among the several states, and especially that a portion of such proceeds be expended in the original thirteen states for purposes of education.[17]

[17] The Assembly adopted resolutions relating to public lands similiar in form to the Connecticut resolutions on the same subject. The Senate did not concur.

January 4. To the Assembly: Transmitting resolutions adopted by the Legislature of Georgia, protesting against the refusal of the Governor of Maine to surrender Daniel Philbrook and Edward Kelleran alleged fugitives from justice, who were charged with having abducted a negro slave, named Atticus, from the State of Georgia.[18]

January 4. To the Assembly: Transmitting a communication from the administrators of the charity hospital in the city of New Orleans. The Legislative records do not contain this communication.

January 4. To the Assembly: Transmitting a memorial of citizens of the counties of Saratoga and Warren, praying for legislative measures in relation to the improvement of the navigation of the Hudson River above tide water. [See note 12.]

January 7. To the Assembly: Transmitting a communication from the Stockbridge Indians.[19]

January 9. To the Assembly: Transmitting the report of the inspectors of green hides and calf skins in the city of New York.

January 9. To the Assembly: Transmitting two petitions of citizens of Monroe county, praying for the establishment of a house of refuge for juvenile delinquents in the western part of the state.

January 10. To the Assembly: Transmitting the annual report of the inspector of fish and olive oil in the city of New York.

January 10. To the Assembly: Transmitting the annual report of the commissary general.

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[18] Chapter 350, passed May 6, prescribed procedure relative to the arrest and detention of fugitives from justice from other states and territories. The Governor was required to transmit a copy of the act to the executive of each state for the purpose of procuring reciprocal legislation on the same subject.

[19] Chapter 40, passed February 27, directed the comptroller to pay to the Stockbridge Indians residing near Green Bay, Wis., $6,196 due to them under the act of 1813, relative to various Indian tribes.

January 12. To the Assembly: Transmitting the annual report of the inspector general of staves and heading in the city of New York.

January 18. To the Assembly: Transmitting the annual report of the inspector and measurer of lumber in the city of New York.

January 18. To the Assembly: Transmitting the annual report of the inspector of sole leather in the city of New York.

January 21. To the Assembly: Transmitting the annual report of the inspector of beef and pork in the county of Madison.

January 21. To the Assembly: Transmitting a communication from the American Antiquarian Society, requesting that all publications authorized and promoted by legislative acts, including judicial decisions, be regularly delivered to the society.

January 22. To the Assembly: Informing that body that in accordance with its resolution he had transmitted to the Governor of Connecticut a copy of the provision of the Revised Statutes relative to depositions taken in this state to be used in courts of other states and countries, with a request that the Governor of Connecticut present the subject to the Legislature of that state, and ask the enactment of a similar law for taking depositions there to be used in this state.

January 22. To the Assembly: Transmitting a report of the inspector of domestic distilled spirits in the city of New York, and recommending that special attention be given to his suggestions concerning abuses of the inspection law in that department.

January 22. To the Assembly: Transmitting the annual report of the inspector of lumber in the city of New York.

January 25. To the Assembly:

ALBANY, *January* 24, 1839.

"GENTLEMEN.—I have the honor to transmit a communication from Thomas B. Wales, Josiah Quincy junior, Edmund Dwight, John Henshaw, George Bliss and L. Pomeroy, esquires, directors of the Western Railroad Corporation of the State of Massachusetts.

Our enterprising fellow citizens of the State of Massachusetts are rapidly completing a railroad from Boston to West Stockbridge, on the borders of this State, with a view to establish a direct communication by railroad between the capital of that State and the capital and interior of New York. They respectfully invite the attention of the Legislature to the suitable means for accomplishing this purpose, so beneficial and important to both States, by the construction of a railroad from West Stockbridge to the city of Albany.[20]

W. H. SEWARD."

January 28. To the Legislature:

ALBANY, *January* 28, 1839.

"I announce the death of STEPHEN VAN RENSSELAER, formerly Lieutenant-Governor, and at the time of his death, Chancellor of the University, President of the Canal Board, and Senior Major General in the Militia of this State.

Besides having occupied these important stations, he has been a representative in both houses of the Legislature, a member of the Convention which framed the Constitution of this State, and a representative in the Congress of the United States.

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[20] By chapter 340, passed May 4, the city of Albany was authorized to borrow $400,000 and invest it in the stock of the Albany and West Stockbridge railroad company. The act was not to take effect until approved by a majority of the qualified electors of the city at a special election.

The various and eminent public services of the deceased, and the universal esteem which he has secured by the blamelessness and benevolence of his life, render it proper that I should communicate this mournful event to the Legislature, that they may adopt such measures as the occasion requires.[21]

W. H. SEWARD."

February 5. To the Assembly:

ALBANY, *February* 5, 1839.

"GENTLEMEN.—I have the honor to transmit a memorial from the New York Historical Society, praying for the passage of a law authorizing the appointment of an agent to visit Europe, to transcribe documents remaining in the public offices of the Governments of England and Holland, illustrating the colonial history of this State.

It would advance the cause of free government throughout the world; and it is due to ourselves, to the memory of our predecessors, and to a just regard for the respect of posterity, that every important circumstance connected with the rise and progress of our free institutions should be recorded and illustrated.

It is believed that we have hitherto manifested a singular indifference in regard to this object. The English Government has made a munificent gift to our State Library, of records illustrating the early history of that nation. Massachusetts has taken care to preserve the resources for her history during the revolutionary contest, by causing to be published the journals of her colonial congress. The State of Georgia has now an agent in London, engaged in obtaining copies of the records belonging to that State. This State has certainly not less interest in rescuing and preserving the memorials of her colonial condition.

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21 Resolutions on the death of Stephen Van Rensselaer were adopted by both houses.

I respectfully commend the petition of the New York Historical Society to the favorable consideration of the Legislature[22].

WILLIAM H. SEWARD."

February 12. To the Assembly: Transmitting resolutions adopted by the Legislature of North Carolina, protesting against the action of the United States senate in expunging from its record a resolution condemning the financial policy of President Jackson; condemning the financial policy of President Van Buren's administration; also the recent act of Congress permitting pre-emption of public lands at the minimum price, and declaring in favor of a division of the proceeds of public lands among the states according to population.

February 12. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

February 13. To the Assembly: Transmitting resolutions adopted by the Legislature of New Jersey, recommending a proportionable distribution of proceeds of public lands among the states, protesting against the pre-emption acts, and also the cession of public lands to states in which they were situated.

February 27. To the Assembly:

ALBANY, *February* 23, 1839.

"By an act of the Legislature, passed on the 15th of April, 1836, the Governor was authorized and directed to employ a suitable number of competent persons, whose duty it should be under his direction to make an accurate and complete geological survey of this State; which survey should be accompanied with proper maps and diagrams, and furnish a full and scientific description of the rocks,

22 Chapter 315, passed May 2, provided for the appointment by the Governor and Senate of an agent to visit England, France and Holland for the purpose of procuring and transcribing documents relating to the colonial history of New York. The documents were to be deposited in the office of the Secretary of State, subject to the use of the State Historical Society.

soils, and minerals of the State, and of its botanical and zoological productions, together with specimens of the same. It was further provided that such maps, diagrams and specimens should be deposited in the State Library, and that similar specimens should be deposited in such of the literary institutions of the State as the Secretary of State should direct.

The act appropriated $26,000 annually, during four years, to defray the expenses to be incurred, and directed that the person or persons who should be employed should annually make a report to the Legislature before the first day of February, setting forth generally their progress in the survey.

I have received a communication from my predecessor, in which he informs me that on the first of January last the following persons were employed in the several departments, and for the compensation respectively mentioned, viz:

John Torrey, in Botany, salary.....	$1,200	
Allowed for drawings.....	300	
		$1,500
Lewis C. Beck, M. D. in Mineralogy, salary.....	$1,200	
Allowed for drawings	300	
Allowed for assistance and some expense.....	150	
		$1,650
James E. De Kay, in Zoology, salary..	$1,500	
Allowed for drawings	300	
		$1,800
John W. Hill, in Zoology, employed as draughtsman.....		800
Timothy A. Conrad, in Palaeontology, salary.....	$1,500	
Allowed for drawings.....	300	
		$1,800

William W. Mather, (1st district) in Geology, salary.	$1,100	
Allowed for drawings	300	
Allowed for cases for specimens.	175	
		$1,575
E. Emmons, (2d district) in Geology, salary.	$1,500	
Allowed for drawings	300	
		$1,800
Lardner Vanuxem, (3d district) in Geology, salary.	$1,500	
Allowed for drawings.	300	
		$1,800
James Hall, (4th district) in Geology, salary.	$1,500	
Allowed for drawings.	300	
		$1,800

I have received reports from Dr. Lewis C. Beck, Timothy A. Conrad, William W. Mather, E. Emmons, Lardner Vanuxem and James Hall. These reports are herewith submitted. I have received no report or communication of any kind from either Mr. John Torrey or Dr. James E. De Kay.

It affords me great pleasure to bear my testimony to the ability and fidelity with which the duties of those persons whose reports are submitted to you, have been discharged.

Neither Dr. De Kay nor Mr. Torrey has hitherto made any report. By reference to a communication of the former gentleman, submitted to the Legislature in February last, you will perceive that it is supposed that from the nature of the duties of himself and Mr. Torrey, partial reports cannot be made until their labors are brought to a close.

If the responsibilities resting upon them shall be discharged with ability equal to that of their associates, the

geological survey will abundantly repay the munificence of the State by numerous and lasting benefits.

It ought to be known to the Legislature that the collection of specimens will far exceed in number and value the expectations indulged at the time of the passage of the act, and cannot be profitably or conveniently deposited in the State Library or in any apartments in the Capitol which can be appropriated for that purpose. The whole collection will form a museum of the highest scientific interest. Unless suitable arrangements are made for its preservation and exhibition, the benefits of the survey will be in a great measure lost.

I submit some suggestions on this subject, made by the Geologists residing in this city.

WILLIAM H. SEWARD."

March 5. To the Assembly:

ALBANY, *March* 5, 1839.

" I have received a communication from John J. Vanderkemp, esquire, general agent of the Holland Company, residing in Philadelphia, informing me that the office of that company at Batavia will be closed in May next; that the office in Philadelphia will be continued no longer than shall be necessary for winding up the concerns of the company in the State of Pennsylvania; and that the original title papers of the tract of land in this State formerly owned by that company, are now remaining in the said offices. Mr. Vanderkemp, on behalf of the Holland Company, offers to deliver these title papers, provided they can be deposited in some suitable place for preservation, and suggests that they be deposited in the office of the Secretary of State. It cannot be necessary that I should enlarge upon the importance of securing and preserving these important papers, affecting the titles of a portion of the territory of this State, forming seven counties; and already containing a population of 300,000.

I respectfully recommend that a law be passed, providing for receiving and preserving these documents.[23]

WILLIAM H. SEWARD."

March 6 and 7. To the Assembly and Senate respectively: Transmitting resolutions adopted by the Legislature of Indiana declaring that "any interference in the domestic institutions of the slave-holding states of this Union, without their consent, either by Congress, or the State Legislatures, is contrary to the compact by which these states became members of the union," and that "any such interference is highly reprehensible, unpatriotic, and injurious to the peace and stability of the union of the states."

March 7. To the Assembly:

ALBANY, *March* 7, 1839.

"The Congress of the United States having had under consideration, immediately previous to their adjournment, the serious misunderstanding which has arisen between the State of Maine and the Province of New Brunswick, passed an act giving to the President of the United States additional powers for the public defence against invasion, and for other purposes. By this act, the President is authorized to resist any attempt on the part of Great Britain to enforce by arms her claims to exclusive jurisdiction over that part of the State of Maine which is in dispute between the United States and Great Britain; and for that purpose to employ the naval and military forces of the United States, and such portion of the militia as he may deem it advisable to call into service, and to increase the military and naval forces of the Union in the event of invasion, or imminent danger of invasion. Provision is also made for sending a special minister to Great Britain, to

[23] Chapter 295, passed April 30, made provision for depositing the Holland Land Company's papers in the office of the Secretary of State.

treat with the Government of that country upon an amicable adjustment of the matters in difference between the two Nations.

While the several State Governments should carefully abstain from any act that might in any degree interfere with the constitutional duties of the Federal Government, it is obvious that occasions may arise in which they ought to make known to that Government, to foreign nations, and to any aggrieved sister State, that we are an united people, jealous of our sovereignty, and determined to resist aggressions upon the rights or territory of the Union. The passage of the act of Congress, to which I have referred, provisionally contemplates that the country may, during the recess of that body, be compelled to assume an attitude of defence against a foreign power, and seems therefore to present one of those occasions which call for such an expression on the part of the several States. The measures adopted by Congress seem to me to have been wisely designed to preserve the existing inestimable relations of peace between this country and Great Britain, as well as to vindicate the rights of the State of Maine, and to maintain the honor and dignity of the nation. It can scarcely be believed that enlightened and christian nations, bound to each other in peculiar relations of feeling and of interest, will unnecessarily suffer the harmony existing between them to be interrupted. The governments of both, as well as their individual citizens, are under the strongest obligations to cultivate every disposition to amity, and to repress all tendencies to hostile action. At the same time, peace is seldom the lot of any nation which does not on all proper occasions manifest that it knows its rights, and will at all hazards, maintain them. I respectfully call your attention to the subject, under the expectation that an expression on our part of concurrence in the policy of the General Government, will contribute to avert

the calamities of war, and secure the speedy and honorable adjustment of the matters in difference between the country and Great Britain.[24]

WILLIAM H. SEWARD."

March 26. To the Legislature: Transmitting resolutions adopted by the Legislature of Missouri reciting the claims of the new states to public lands therein, protesting against the distribution of the proceeds of public lands among the several states for the reason that it would give the old states advantage over the new, and demanding a graduation of the price of public lands according to their different values.

April 2. To the Assembly:

VETO of a bill entitled "An act to incorporate the Masonville Turnpike Road Company."[25]

The bill was vetoed on the ground that it did not prescribe the location of the proposed road—neither the place where it was to begin, its route, nor its terminus.

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[24] Each House appointed a select committee to consider the Governor's message relative to the New Brunswick boundary. The Assembly adopted the following resolutions, which were recommended by its committee:

"*Resolved*, That the Assembly concur in the sentiments expressed by his Excellency the Governor, in the special message transmitted to the Legislature, upon the subject of the controversy between the State of Maine and the Province of New Brunswick.

Resolved, That the Assembly highly approve of the course of the President of the United States, and of the action of Congress in relation to this unfortunate controversy; and that the unanimity with which measures have been adopted, as well to maintain peace as to repel invasion, is a fit subject of congratulation.

Resolved, That the State of New York will second the efforts of the General Government to preserve pacific relations with Great Britain, and at the same time hold herself in readiness to aid such Government in resisting encroachments upon the rights or territory of any portion of the Union."

Similar resolutions were adopted by the Senate.

[25] The Masonville turnpike bill was amended to meet the Governor's objection and was again passed and became chapter 125 on the 4th of April.

April 9. To the Legislature:

"ALBANY, *April* 9, 1839.

"At the recent session of the Legislature of the State of Pennsylvania, a committee was appointed by the Honorable the Senate of that Commonwealth, with instructions to consult with the constituted authorities of this State, in order to ascertain their views in relation to a connection between the North Branch division of the Pennsylvania canal, and the Chenango canal or the Chemung canal, or both of those canals, in this State.

The Hon. Charles B. Penrose, Speaker of the Senate of Pennsylvania, the Hon. William Purviance, and the Hon. E. Kingsbury, junior, constituted that committee. I have received from those gentlemen a communication, announcing their arrival in this city, and explaining the object of their attendance. I submit this communication to the Legislature, and respectfully recommend that such measures may be adopted in relation to the same, as are required by a becoming comity towards the enlightened and enterprising Commonwealth of Pennsylvania, and towards the Honorable body immediately represented by the committee, as well as by the importance of the subject upon which they desire to consult with the constituted authorities of this State.[26]

WILLIAM H. SEWARD."

April 15. To the Assembly: Transmitting several communications relative to disturbances in the northeastern part of the State near the Vermont and Canada lines, and

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[26] A joint committee of three members of the Senate, and five members of Assembly was appointed to confer with the Pennsylvania delegation. The committee recommended that connection be made between New York canals and the North Branch of the Pennsylvania Canal. Chapter 306, passed May 1, directed the canal commissioners to survey a route from the termination of the Chemung canal along the valley of the Chemung River to the State line near Tioga Point at the termination of the North Branch Canal of Pennsylvania.

which were alleged to have been caused by marauders either from Vermont or Canada or both. See Assembly document No. 375, which includes correspondence between Major General St. John B. L. Skinner and Governor Seward, Governor Seward and the President of the United States, Secretary of War and Governor Seward, Lieutenant Col. Pierce and General Skinner, Adjutant General Rufus King and Major Skinner, a communication from citizens of Clinton county relative to the burning of Rouse's Point on the 17th of March, with accompanying affidavits, a communication from citizens of Champlain to Abijah North, member of Assembly from Clinton County, a proclamation by Governor Seward, dated March 16, offering a reward of $100 for the conviction of any person guilty of participation in the destruction of property in connection with such disturbances; a letter from Governor Seward to the citizens of Clinton County acknowledging the foregoing communication to him, and in which the Governor said:

"In answer to communications heretofore addressed by me to the President of the United States, I have received assurances that the earliest information shall be given to me which shall require the arms or troops of the State to be dispatched to our northern frontier. Col. Worth, in obedience to instructions from the War Department, has informed me under date of the 20th inst. that no necessity exists for ordering any militia to the frontier; but he has suggested the propriety of placing in charge of the United States troops a sufficient supply of State arms, to be issued on emergency, to the militia of the State. In accordance with this suggestion, I shall direct such a supply to be despatched to the frontier, as Col. Worth shall deem necessary. I shall at all times be pleased to receive communications from yourselves or others of my fellow-citizens in relation to the situation of the frontier."

Correspondence between Col. W. J. Worth and Governor Seward, Lieutenant Col. J. B. Crane to Governor Seward, the Provincial Secretary of Upper Canada and John C. Spencer, Secretary of State of New York.[27]

April 24. To the Assembly: Transmitting resolutions adopted by the Legislature of Ohio approving the action of Congress, the president of the State of Maine, relative to the boundary dispute with New Brunswick and in which Ohio tenders her whole means and resources to the authorities of the Union in sustaining our rights and honor."

May 3. To the Assembly: Transmitting a report from John Torrey, M. D. Botanist, and an extract from a communication from J. E. De Kay, M. D., Zoologist.

In his report the botanist says:

"The number of species and varieties already ascertained as belonging to the flora of the State, exceeds 2,300. Of these 277 are trees or shrubs; 200 are medicinal plants, or are reputed to possess medicinal virtues; 250 are ornamental herbaceous species; about 125 have been introduced from other countries, and have become naturalized in our soil. Of true Grasses, we have 134 species, 25 of which are of foreign origin, but are now completely naturalized. The Sedges are 140 in number; more than half of them belong to the genus Carex."

The Zoologist said he had drawings and descriptions of nearly 70 animals of the State of New York, also rough notes and descriptions of many others, which are in the course of preparation for publication.

May 3. To the Assembly: Transmitting additional communications relative to the disturbances on the northern frontier (See Assembly document, No. 412) including correspondence between the Provincial Secretary of Upper

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27 Chapter 379, passed May 7, made an appropriation for expenses incurred by the members of the 12th division of infantry while in service on the northern frontier during the last year.

Canada and John C. Spencer, Secretary of State of the State of New York, Col. W. J. Worth and Adjutant General King, Commissary General Adoniram Chandler and Adjutant General King.

May 17. The Legislature adjourned without day.

1840. JANUARY 7. LEGISLATURE, SIXTY-THIRD SESSION.

WILLIAM H. SEWARD, Governor.

ANNUAL MESSAGE.

FELLOW-CITIZENS.— The experience of the past year teaches us that the most perfect form of government, and the most favored condition of society, cannot exempt us from the vicissitudes of life. We have, nevertheless, great cause for thankfulness to the Universal Father. The seasons have been propitious; we have been free from the ravages of pestilence and the calamities of war; the earth has yielded abundant fruits, and notwithstanding the embarrassments which have been felt by every class of society, the comforts of life were never more equally or more profusely distributed. Industry has not been diverted from its pursuits, and mutual confidence, although temporarily shaken, has still a firm support in the prevalence of morality and the supremacy of the laws. The credit of the State remains unimpaired, and its currency has in a great degree escaped the evils which have elsewhere proved disastrous. Peaceful relations have been maintained with foreign countries, and the harmony of the states has not been disturbed. The great safeguards of our liberty remain; all the elements of our national prosperity have been preserved; and we are permitted to rejoice, with increased confidence, in the durability of the Union, and the perpetuity of republican institutions.

The officer having charge of the fiscal department will lay before you full information concerning the condition of the treasury. The revenues of the state have increased during the fiscal year. The auction duties have amounted to $225,401.84, being an increase over those of the preceding year of $83,299.49. The amount received for salt duties has been $189,263.12, being an excess over those of the previous year of $80,333.57.

I respectfully refer you to the report which will be submitted by the commissioners of the canal fund, for detailed information concerning that fund, and the operations of the commissioners. The amount of tolls, including rents of surplus water and sales of lands, on all the canals during the last fiscal year, was $1,656,902.11, being an increase over the receipts of the previous year of $165,202.15. The whole amount of charges upon the canals, excepting interest on loans, was $599,099.37, which deducted from the receipts leaves the net proceeds from tolls $1,057,802.74. The amount of charges has been increased $139,111.78 during the past year by payments, in pursuance of legislative direction, for the Glens Falls feeder, for the improvement of the Tonawanda and Ellicott creeks, and for the Black river canal and Erie canal feeder, and by payments under special acts for previous liabilities, leaving the ordinary charges at $459,987.59. The charges of the preceding year, after deducting the extraordinary payment for the Glens Falls feeder, were $562,315.32, showing a diminution in the ordinary charges during the last fiscal year of $102,327.73.

The productive capital of the common school fund, at the close of the last fiscal year, was $1,932,421.99, to which has since been added the sum of $45,647.64, making an aggregate of $1,978,069.63. The revenue during the year, including $165,000 appropriated from the income of the United States deposit fund to the support of common schools, was $282,472.27. The amount paid out of the treasury was $275,000.04.

The capital of the literature fund is $268,164.38. The revenue during the year, including $28,000 appropriated from the income of the United States deposit fund, was $48,109.07. The amount paid from this revenue was $47,978.46.

The bank fund has a capital of $818,820.59. Its revenue during the year was $36,638.20. There has been paid during the same period to contributing banks, on account of dividends, $29,681.51.

The improvement which has taken place in all the revenues of the state, while it must be highly gratifying to our fellow citizens, will, I hope, only conduce to greater economy in the management of public affairs.

The fourth instalment of the United States surplus revenue, which was directed to be distributed among the states by an act of congress, is still withheld. The portion of that instalment due to this State is $1,338,173.57. Relying upon prompt payment of that instalment the State has loaned an equivalent sum to her citizens. I cannot doubt that you will insist upon the fulfillment of the pledge of the federal government, and will, at the same time, protest against the withdrawal of the instalments already received.

Two hundred and nine convicts were received within the year into the state prison at Mount Pleasant. The whole number of convicts in that prison is eight hundred and five. The amount received for labor during the past year, including the value of marble furnished for the construction of the new state hall, was $73,203.34. The expenditures, including moneys paid for the completion of the prison for female convicts and the expense of transportation of convicts, were $73,449.81.

The number of convicts in the state prison at Auburn is six hundred and sixty-five. The number received during the year was two hundred and twenty-eight. The earnings of the prison during the year were $60,161.46, and the expenditures $51,671.21.

The high reputation which this state had acquired from the improvement of its criminal code, and from its system of penitentiary discipline, has recently become impaired by very general complaints of inhumanity in the management of our prisons. While the punishment of offenders should always be enforced with firmness, the spirit of the age manifestly requires that discipline should be tempered with kindness, and that moral influences, rather than severe corporal punishment, should be employed to secure the submission and promote the reformation of the convict. I trust that you will bestow early attention upon the defects of the present system, and I respectfully suggest that provision be made by law for the instruction of convicts, and for supplying them with such books as shall conduce to their reformation.[1]

I also invite your attention to the condition of our county jails. The baleful influence of vicious association is too often promoted by the defects in their construction, and the experience they furnish is calculated to destroy whatever remains of generous spirit or virtuous motives. Their defects demand correction, not less upon the ground of economy than from considerations of humanity; and if we would not fall into a common error, we should seek to reclaim less hardened offenders, by cultivating their moral feelings while we are dispensing the punishment awarded to their crimes.

You will learn from the report of the managers of the house of refuge that the responsibilities of that institution have been discharged with efficiency, and with the most salutary results. The establishment of a similar institution in the western part of the state is desired by a very large number of our fellow citizens. This proposition derives

1 Chapter 204, passed May 4, for the better regulation of the State Prisons at Auburn and Mount Pleasant, abolished the offices of agent, principal keeper, and deputy keeper and substituted therefor the offices of agent and keeper to be appointed by the board of inspectors and the act regulated the duties of the new officers.

weight from the consideration of the expense of transporting offenders from distant counties, and the cost of maintaining them in a populous city, and will doubtless receive at your hands the discriminating favor to which it is justly entitled.

The institution for the instruction of the blind continues to discharge its responsibilities with good success. It has sixty-six pupils, of whom fifty-nine are state pupils, and there are sixty-nine vacancies to be filled from the different counties, in pursuance of the law passed at the last session. The institution for the deaf and dumb administers its inestimable benefits to one hundred and seventy pupils, maintains its high reputation, and enjoys the unmeasured confidence and kindness of the community among whom it is located. One hundred and twenty of these pupils, being the full number allowed by law, are supported at the expense of the state.[2]

I transmit a report of the commissioners appointed to superintend the erection of the lunatic asylum, from which you will learn that they are prosecuting their important duties with efficiency.[3]

Our scientific institutions continue to maintain their high reputation. Twenty-five students were graduated at Columbia College within the year, and that institution has now one hundred and thirty-eight members. The number of graduates at the University of the City of New York was twenty-eight, and its present number of under graduates is eighty. The grammar school connected with that institution contains two hundred and sixty pupils. One hundred and six students received their first degree at Union College, and it has now two hundred and seventy-

2 Chapter 174, passed April 27, extended for five years existing provisions of law relative to the New York Institution for the Instruction of the Deaf and Dumb, and also authorized it to receive one additional pupil from each Senate district.

3 Chapter 303, passed May 14, appropriated $75,000 to be used in the erection of the New York State Lunatic Asylum.

eight members. There are ninety-two students at Hamilton College, and seventeen were graduated within the year. Geneva college has sixty-three students.

The state is a creditor of the University of the City of New York for materials furnished by the state prison at Mount Pleasant and used in the construction of the collegiate buildings. The trustees of that institution will apply for a relinquishment of the debt. I have great pleasure in transmitting to you a document containing a view of the rise, progress, and present condition of the University. The liberal principles upon which it was established, the munificent endowments of its founders and patrons, and the perseverance with which it has surmounted many and great embarrassments, as well as the promise of its usefulness, guaranteed by new and auspicious counsels, commend the appeal of the trustees to the favorable consideration of the legislature.[4]

You will learn with great satisfaction that the law providing for the establishment of libraries in the school districts has been carried into successful operation in most parts of the state, and that measures have been adopted, in pursuance of an act passed at the last session, to secure an efficient visitation of the common schools.

Although our system of public education is well endowed, and has been eminently successful, there is yet occasion for the benevolent and enlightened action of the legislature. The advantages of education ought to be secured to many, especially in our large cities, whom orphanage, the depravity of parents, or some form of accident or misfortune seems to have doomed to hopeless poverty and ignorance. Their intellects are as susceptible of expansion, of improvement, of refinement, of elevation, and

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[4] According to Chap. 297, passed May 14, the agent of the State Prison at Mount Pleasant had recovered a judgment against the University of the City of New York for $9,860.19. The act discharged and cancelled the judgment, and released the University from any further liability thereon.

of direction, as those minds which through the favor of Providence are permitted to develop themselves under the influence of better fortunes; they inherit the common lot to struggle against temptations, necessities, and vices; they are to assume the same domestic, social, and political relations; and they are born to the same ultimate destiny.

The children of foreigners, found in great numbers in our populous cities and towns, and in the vicinity of our public works, are too often deprived of the advantages of our system of public education, in consequence of prejudices arising from difference of language or religion. It ought never to be forgotten that the public welfare is as deeply concerned in their education as in that of our own children. I do not hesitate, therefore, to recommend the establishment of schools in which they may be instructed by teachers speaking the same language with themselves and professing the same faith. There would be no inequality in such a measure, since it happens from the force of circumstances, if not from choice, that the responsibilities of education are in most instances confided by us to native citizens, and occasions seldom offer for a trial of our magnanimity by committing that trust to persons differing from ourselves in the language or religion. Since we have opened our country and all its fullness to the oppressed of every nation, we should evince wisdom equal to such generosity by qualifying their children for the high responsibilities of citizenship.

The time assigned for the completion of the geological survey of the state is about to expire. High expectations of its usefulness have been raised by the partial reports which have from time to time been submitted to the legislature, and provision should be made for the preservation of the invaluable scientific treasures which have been collected. Extensive as the collection is, it will probably be continually increased by new contributions. The place assigned for its accommodations should, therefore, be both

spacious and accessible. The encouragement of agriculture, by the more general dissemination of the sciences which it employs, has been the subject of frequent recommendations from this department, and of much discussion in the legislature. The geological survey may be regarded as laying the foundation of institutions for popular instruction in these sciences, and I confidently anticipate that it will not only develop the mineral resources of the state, but will secure to agriculture its rightful consideration and influence.[5]

The whole number of the militia of the state is 180,103, of which 7,427 are cavalry and horse artillery, 9,256 are artillery, 160,420 are infantry, including light infantry and riflemen, and 3,000 are cavalry and artillery attached to brigades of infantry. It is manifest that the militia system has lost some of the popular respect with which it was once regarded, and has received little of that legislative care which is necessary to preserve the usefulness and efficiency of all our institutions. This cannot be prudent, unless it is wise to forget in peace the probability of war, and in undisturbed tranquillity the danger of civil commotion. I trust, therefore, that you will take measures to bring the subject before congress, in order to accomplish the necessary reform. It is possible that some of the defects of the system may be reached by our own legislation. At present, the rich and the fortunate evade in a great degree the performance of military duty, while its expenses and sacrifices fall without abatement upon those members of society who are least able to bear them. If it be necessary to preserve the organization of so many of our citizens as are now enrolled, which is at least doubtful, it is

[5] Chapter 245, passed May 7, provided for setting apart rooms in the old State Hall as a state museum, in which to arrange and display the various specimens, maps, figures and illustrations collected in the course of the geological survey, and chapter 246, passed May 8, provided for continuing the survey.

at all events just, and consonant with the spirit of our institutions, that the taxes and burthens of the militia service should be equalized.

The laws by which judges of the county courts are authorized to interfere with the boards of supervisors, in the appointment of commissioners of deeds, county treasurers, and county superintendents of the poor, manifest an unjust and unwise distrust of the intelligence and virtue of the people, and a want of due regard to the sacredness of the judicial office. The democratic principles of the constitution demand the repeal of those laws. I also respectfully recommend that provision be made for the election of commissioners of deeds by the people.[6]

The imprisonment of non-resident debtors, against whom no fraudulent practice or intent is alleged, operates injuriously to the interests of trade, and can be defended upon no ground which was not abandoned when the great principle was established in this state that the personal liberty of the honest but unfortunate debtor ought not to be subjected to the caprice or cupidity of an unfeeling creditor.[7]

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[6] The Governor's suggestion as to the relation of county judges to appointments was embodied in chapter 130, passed April 16, "to repeal the laws associating the county judges with the board of supervisors in the appointment of county treasurers and superintendents of the poor." The repeal included the act of 1836 relative to the appointment of county treasurers, the fourth section of the act of 1832 relative to the appointment of superintendents of the poor, and also the sixteenth section, title first, chapter 20, part first of the revised statutes.

The office of commissioner of deeds in towns was abolished by chapter 238, passed May 7, and its powers and duties were transferred to justices of the peace. Chapter 290, passed May 13, authorized the Governor to appoint commissioners in each state and territory, and in the district of Columbia to take the proof and acknowledgment of deeds and conveyances and other written instruments executed therein to be used in this state.

[7] Chapter 165, passed April 25, amended the act of 1831, abolishing imprisonment for debt by omitting the provisions relative to the residence of the debtor, and Chapter 377, passed May 14, amended the same act by authorizing the discharge of the defendant, or the postponement of a hearing on his giving a bond conditioned against the transfer or removal of his property pending the decision of the matter.

Foreigners entitled to be naturalized, and desirous of the privileges of citizenship, ought rather to be encouraged, than deterred, as they frequently are, by the onerous charges attending the requisite legal proceedings. Disabilities in relation to acquisition and alienation of real estate by resident foreigners are a remnant of feudal principles, believed to be not only unnecessary for the security of the state, but inconsistent with the spirit of our constitution, and injurious to the general prosperity. It is worthy of your consideration, whether the time has not arrived for the adoption of a more liberal policy, and whether the temporary relief from these disabilities which has heretofore been granted, chiefly in favor of individuals, may not now be made general and permanent.

I beg leave to refer you to the suggestions contained in my last message concerning the laws regulating elections. It is of vital importance to the security of our institutions, not only that our elections should be conducted with impartiality, and should thus express the will of the majority of the people, but that there should be entire and universal confidence in their purity. The acquiescence required of the minority cannot be expected to be rendered with cheerfulness, if it be at all questionable whether the public will is truly expressed. I cannot doubt that you will feel it to be your duty to establish the necessary safeguards for the full and uninterrupted exercise of the elective franchise by all those, whether rich or poor, native or naturalized, whatever may be their employment or condition in life, to whom that inestimable privilege is guaranteed.[8]

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[8] Chapter 78, passed March 30, provided for the registration of electors in the city of New York, and contained other provisions relative to elections. On approving this bill, the Governor sent a memorandum to the Legislature, pointing out certain defects and suggesting amendments. See special message of March 31. An amendatory act, chapter 361, was passed May 14.

By chapter 310, passed May 14, general elections in Kings County were to be held on the Wednesday succeeding the first Monday in November and limited to one day.

The constitution provides that every male citizen of the age of twenty-one years, who shall have been an inhabitant of this state one year next preceding any election, and for the last six months a resident of the county where he may offer his vote, shall be entitled to vote in the town or ward where he actually resides.[a] High judicial authorities differ as to the meaning of the word resident. It is within the power of the legislature to define this term, and such a measure is highly necessary, as well to relieve doubts as to secure the enjoyment of the elective franchise to those of our fellow citizens whose occasional or temporary employment in the navigation of our canals and rivers, and upon our public works, produces doubts concerning the place where they are entitled to vote.

The reorganization of the court of chancery, with an abridgment of the jurisdiction and patronage of the chancellor, is alike indispensable to ensure the personal security of the citizen, and to preserve the harmony of our judicial system. The proceedings in that court are attended with vexatious delay and intolerable expense. Questions of equity peculiarly demand the consultations of a bench, and the mass of appeals, interlocutory motions, and original causes, is too great for any one chancellor to hear and decide, consistently with a proper discharge of the duties required of him as a member of the court for the correction of errors.

The benefits anticipated from the reduction of the number of justices of the supreme court, and the distribution of a portion of their powers and duties among eight circuit judges, have not been realized.

I therefore respectfully suggest the expediency of dispensing with the offices of vice-chancellor and circuit judge, and of providing for amendments of the constitution which

[a] Const. 1821, Art. 2, § 1.

shall direct the appointment of three chancellors, with co-ordinate powers, and of additional justices of the supreme court.[9]

The collection of debts is unnecessarily delayed by forms, embarrassed by technicalities, and burthened with costs. The evils experienced might in a great degree have been prevented had the necessary rules of practice and pleading been established by the courts themselves. It is worthy, however, of consideration, whether the power now exercised by the court of chancery, in reaching the equitable property of a debtor, may not be entrusted in a great degree to the common law courts, and whether the ruinous expense attending the forclosure of mortgages in chancery may not be avoided by the more simple method of sale after advertisement, and after personal notice to parties having incumbrances on the mortgaged premises.[10] The forms of pleadings are unnecessarily prolix, and dilatory and evasive pleadings ought to be more effectually prevented. Parties should be allowed to perfect judgments in vacation as well as during the terms of the courts. The alienation of land should be facilitated by requiring all incumbrances and liens to be recorded or docketed in the county where the land is situated. The jurisdiction of justices' courts ought to be extended to litigated cases, where the amount involved does not exceed one hundred dollars.

The compensation of public officers is generally derived from the equal contribution of those for whose benefit their services are rendered, but that of attorneys, solicitors, and officers of the courts of justice is unhappily often obtained from those whose condition ought rather to excite

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9 Several judiciary amendments were considered, but the two houses did not reach an agreement on any plan for the reorganization of the judiciary.

10 Chapter 342, passed May 14, was intended to reduce the expense of foreclosure in the court of chancery. The act was amended in 1841, chapter 237. The foreclosure of mortgages by advertisement was provided for by chapter 277, passed April 12, 1842.

sympathy than expose them to additional burthens. The legislature which should, in a season of adversity like the present, diminish the expenses of legal proceedings, as far as can be done consistently with the full and perfect administration of justice, would advance the permanent usefulness of the profession of the law, promote the happiness of society, and deservedly obtain the gratitude of the people.[11]

It was represented to me, on the fifth of December last, by the sheriff of the county of Albany, that he had, on many occasions during several months previous, been resisted in the performance of his duty, and prevented from executing process of the supreme court, and that he had been unable to overcome the resistance with the unarmed force of his county. He thereupon applied to me to call out a sufficient military force to enable him to execute the process committed to him. Proofs were submitted to me, which went to show that the resistance was preconcerted and organized, and that it extended over a large portion of his county. The nature and duration of the resistance complained of appeared to me to require the adoption of immediate measures for restoring the supremacy of the laws. Unwilling, however, to resort to the extreme remedy until every other measure had failed, I deemed it proper for the sheriff to sue out process in the name of the people against the resisters, and to make a farther effort to perform his duty with the aid of the armed power of his county. Measures were taken at the same time to have in readiness a sufficient force to sustain the sheriff, if the effort thus to be made should prove ineffectual. Information was subsequently communicated to me by him, that he had proceeded with the armed power of his county and had

[11] The act to reduce the expense of foreclosure in the court of chancery, chapter 342, contained provisions regulating the fees of solicitors, counsel and court officers. Solicitors' fees were further regulated by an amendatory act, passed in 1841, chapter 237.

been met by a large concourse of persons, sufficient in number to overpower him, and assembled with the obvious purpose of obstructing him in the performance of his duty. This information was accompanied by a renewal of his application for a military force. Still desirous, if possible, to prevent a resort to such force, I issued a proclamation, setting before the resisters the nature of their conduct, and the painful, but inevitable, consequences of persisting in it, enjoining them to disperse, and appealing to all good citizens to assist in maintaining the supremacy of the laws. In order, however, in any event to secure this result, I directed, as required by law, a military force to proceed to the scene of resistance, and provided for a reinforcement, should it be found necessary. It is creditable to the citizens who had inconsiderately become involved in unlawful proceedings, that they dispersed very soon after these measures had been adopted, and the sheriff proceeded without additional military aid to execute the process of the law. It soon became manifest that no farther organized resistance would be offered, and the militia were thereupon immediately withdrawn. Although the occasion was one to be deeply regretted, yet it is a source of satisfaction that a very large proportion of those engaged in the resistance were immediately convinced of the error of their proceedings, relinquished their designs, and manifested a cheerful and patriotic submission to the laws. It is also gratifying that this desirable end was attained with little public inconvenience, and without destruction of property or loss of life. To this result, the militia, by their alacrity, prudence and good conduct, contributed in an eminent degree.

The resistance to the sheriff arose out of a controversy between the tenants of the manor of Rensselaerwyck and its proprietor. The lands in that manor are held under ancient leases, by which mines and hydraulic privileges, rents payable in kind, personal services, and quarter sales

are reserved. Such tenures, introduced before the revolution, are regarded as inconsistent with existing institutions, and have become odious to those who hold under them. They are unfavorable to agricultural improvement, inconsistent with the prosperity of the districts where they exist, and opposed to sound policy and the genius of our institutions. The extent of territory covered by the tenures involved in the present controversy, and the great numbers of our fellow citizens interested in the questions which have grown out of them render the subject worthy of the consideration of the legislature. While full force is allowed to the circumstance that the tenants enter voluntarily into such stipulations, the state has always recognized its obligation to promote the general welfare, and guard individuals against oppression. The legislature has the same power over the remedies upon contracts between landlord and tenant as over all other forms of legal redress. Nor is the subject altogether new in the legislation of the state. It was brought under consideration in 1812 by a bill reported by three jurists of distinguished eminence and ability. I trust, therefore, that some measure may be adopted, which, without the violation of contracts, or injustice to either party, will assimilate the tenures in question to those which experience has proved to be more accordant with the principles of republican government, and more conducive to the general prosperity and the peace and harmony of society.[12]

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12 Chapter 60, passed March 21, made provision for the compensation of the militia, called into service in December, 1839. Chapter 277, passed May 13, provided for the appointment of two commissioners by the Governor and Senate, to examine into the matters in dispute between the landlords and tenants in the Manor of Rensselaerwyck, with a view of procuring a settlement of such disputes and the extinguishment of the claims of the landlords to certain rights relating to water, mines and quarter sales. The commissioners were also required "to inquire into the effect of the tenures existing in said manor, upon the agricultural improvement of the country, and upon the enterprise, habits and character of the population."

A requisition was made upon me in July last, by the Executive of Virginia, for the delivery of three persons as fugitives from justice, charged with having feloniously stolen a negro slave in that state. I declined to comply with the requisition, upon the grounds that the right to demand and the reciprocal obligation to surrender fugitives from justice between sovereign and independent nations, as defined by the law of nations, include only those cases in which the acts constituting the offence charged are recognized as crimes by the universal laws of all civilized countries; that the object of the provision contained in the constitution of the United States, authorizing the demand and surrender of fugitives charged with treason, felony or other crime, was to recognize and establish this principle of the law of nations in the mutual relations of the States as independent, equal and sovereign communities; that the acts charged upon the persons demanded were not recognized as criminal by the laws of this state or by the universal laws of all civilized countries: and that consequently the case did not fall within the provision of the constitution of the United States.[b]

The Governor of Virginia in his last annual message referred the subject to the consideration of the legislature of that state, and declared that my construction of the constitution of the United States could not be acquiesced in or submitted to. He added that if it were allowed to prevail, and no relief could be obtained against what he designated as a flagrant invasion of the rights of Virginia, either by an amendment of the constitution of the United States, or by the action of the legislature of Virginia, it might ultimately become the important and solemn duty of Virginia to appeal from the cancelled obligations of the national compact to original rights and the law of self preservation.

I confess my surprise that it should in any part of the Union be regarded as a new and startling doctrine that

[b] U. S. Const. art. 4, § 2, clause 2.

the constitutional power of the Executive of any other state to demand the surrender of a citizen of this state, to be carried to the former and tried for an offence committed there, is limited to cases in which the offence charged is recognized as criminal by the statute laws of this state, by the common law, or by the universal laws of mankind. Nor can I withhold the expression of my sincere regret that a construction of the constitution, manifestly necessary to maintain the sovereignty of this state and the personal rights of her citizens, should be regarded by the Executive of Virginia as justifying in any contingency a menace of secession from the Union.

The subject is one which appertains to the Executive department. The duties of that department in such cases are prescribed by the constitution of the United States, and not by the constitution or laws of this state. Nevertheless, the respect I entertain for the Executive of Virginia, as well as the deference I owe to the legislature of this state induce me to transmit herewith the correspondence which has taken place.[13]

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[13] See Special Message of April 11. An Assembly committee which considered the Virginia requisition, submitted the following report on the 14th of May:

"That by the constitution and laws, the power of causing the arrest of persons demanded as fugitives from justice is vested in the Executive, and his discretion in delivering up said persons cannot be controlled by any legislative action.[1] Still on a subject of such moment, in which the feelings, if not the interests of a sister State are involved, the Governor of this State evinced a proper regard for those feelings and a just deference to public sentiment, in submitting to this Legislature the whole correspondence that had taken place between him and the Executive of Virginia. On a careful examination of that correspondence, your committee cannot discover any occasion for the interposition of this house, even by way of advice. They believe the positions taken by the Governor of this State, to be sound and judicious; and that his exposition of the meaning of the constitutional provision in question, is the only one that can be given consistent with the sovereignty of the State and the rights of the citizens, while it is in strict conformity with our federal obligations to other States, and recognizes all the rights which were intended to be secured.

"The committee content themselves with the expression of their general concurrence in the views presented by the Governor, because the subject is one which cannot be discussed with brevity, and because it has already been examined and illustrated with distinguished ability. Conceiving that there

[1] U. S. Const. art. 4, § 2, clause 2.

Our fellow citizens in various parts of the state will very justly call your attention to the condition of the currency. We are a commercial people. We are rendered so by the location of our country, its physical formation, its variety of climate and productions, and its internal communications by land and water; by the operation of republican institutions and equal laws; by our wants; by our resources; by our enterprise; by the mutual confidence arising from moral and intellectual cultivation; by the intercourse existing among the citizens of the several states, and by our relations with foreign nations. The federal government has heretofore encouraged commerce by entering into commercial treaties, by the establishment of a navy, by the reduction of imposts, and by the improvement of rivers and harbors on our lakes, as well as on the seaboard. The legislatures of the several states have seconded this policy by increasing the facilities for trade. The promotion of commerce in all its branches affords the most effectual encouragement to agriculture and manufactures, because commerce is only an exchange of productions. The wants of one region are supplied by the labor of another, and thus the industry of all is rewarded. Our internal commerce knows no political or geographical lines. It pervades every region, seeking and exchanging the surplus productions of every department of industry. To effect

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is no occasion to submit any proposition to the house for its action, your committee ask to be discharged from the further consideration of the subject."

The committee was discharged as requested.

Chapter 225, passed May 6, "to extend the right of trial by jury" contained the provision that

"Instead of the hearing provided by the first article of Title one and Chapter nine of the third Part of the Revised Statutes, to be had before a court or officer, upon the return of any writ of habeas corpus issued to bring up the body of an alleged fugitive from service or labor to which he is held under the laws of any other state, who shall have escaped into this state, the claim to the service of such alleged fugitive, his identity, and the fact of his having escaped from another state of the United States into this state, shall be determined by a jury."

For a further consideration of the subject of fugitives from justice, see *post*, special messages of March 26, April 14, and May 15.

this exchange a currency or medium is indispensable, and it should every where have the highest attainable uniformity of value. A mixed currency, composed of coin and paper redeemable in coin, has unavoidably resulted from the condition of our country and our intercourse with foreign nations. That such a currency is far better than one exclusively metallic is proved by contrasting the general prosperity of the countries in which it is employed with the condition of those which use only the precious metals. But it is attended by the disadvantage of a liability to expansion beyond the legitimate wants of trade, and in order to prevent such expansions as far as possible, and mitigate their evils, it must be subjected to regulation. It is a consequence of the independent action of the legislatures of the several states that the paper money issued under their authority must in the absence of adequate regulation, be unequal in security and in convertibility, and that the amount issued must often be disproportioned to the exigencies of trade. Heretofore the federal government has discharged the responsibility of such regulation, but for some time past congress has made no provision for that important purpose, and the currency of the country has been supplied by paper money issued under the authority of twenty-six different states, in amounts limited by other wants than those of trade, and regulated upon other considerations than those which regard the general interests of the whole country.

The exchange of productions between distant parts of the country is burthened with ruinous expenses, and the prompt collection of debts is rendered impossible. Internal commerce has suffered a check, and derangement is felt in every department of business. The expenses, losses, and sacrifices resulting from the embarrassments of trade fall ultimately upon those engaged in productive industry, and cause a depreciation in the value of labor, of the fruits of the earth, and of the soil itself. In the present instance,

the evils have been aggravated by a long and severe derangement in our foreign commerce. As if the neglect of its appropriate and important functions were not enough, the federal government has contributed to increase the general embarrassment, by manifesting a persevering hostility to the institutions of the states, and has disturbed the general confidence by efforts to introduce a metallic currency. The introduction of such a currency is impracticable, would be unjust if it were practicable, because it would require our citizens, in the absence of necessity or adequate motive, to reduce the value of labor and property to the depreciated standard of a specie circulation. To the people of this state, and all who resort to her great commercial market, the measures adopted by the federal government to carry this project into effect have been productive of unmitigated evil, while the earnestness with which our fellow citizens in some portions of the Union sustain those measures proves that they endure the same evils with a fallacious hope of being able to transfer to themselves a considerable portion of the commerce which is now enjoyed by New York. I trust, therefore, that these measures will receive no support from us, but that whatever influence the sanction of the legislature may have will be exerted in favor of a policy that shall immediately restore the prosperity of the Union, and preserve the commercial advantages of our state.

The currency heretofore established in this state, through the agency of safety fund banks, had a safe and wholesome action while the currency of the nation was regulated by the federal government. But that system of banking became odious as a monopoly, and the unequal distribution of its privileges and the corrupting tendency of applications for legislative charters spread discontent and alarm throughout the state. From these circumstances resulted the passage of the law which authorizes the business of banking to be carried on by associations without

charters. Either of these systems would, under ordinary circumstances, have furnished a currency for this state, which within our own boundaries would have been uniform and readily convertible into specie, and as exchanges are generally in favor of this state, would have been equally useful in other states. Although our banking institutions have not, as on a former occasion, suspended the payment of specie, the farmer, the mechanic, and the merchant are obliged to receive bank notes whose full value cannot be realized without presenting them for redemption at a distant place. The commerce of the state is embarrassed, and agricultural and manufacturing industry are oppressed with the extortion of brokers and usurers. However the federal government may choose to neglect its proper functions, the evils of our domestic currency are within your reach, and I trust they will be the subject of speedy and effectual reform.

It is a high privilege to furnish a circulating medium, whether that privilege be conferred by charter, or enjoyed under the more equal operation of a general law. It partakes of the responsibilities and dignity which belong to the sovereignty of a state, and its profitableness has been evinced by extraordinary dividends and accumulations. It is, therefore, not demanding an unjust or unreasonable equivalent to require those who enjoy this privilege to maintain a sound and uniform currency. Various plans have been suggested to accomplish this important object. One of these contemplates the employment of the bank fund, with equivalent contributions from associations formed under the general law, to redeem in the city of Albany the bills of the several banks. It is probably a sufficient objection to this plan that it would pervert the bank fund from its legitimate object and jeopard its security. A second system is to require the country banks to redeem their notes either in the city of New York or in the city of Albany. The objection to this plan is that it would

be unjust to require a banking institution to provide funds for paying its liabilities at two places, at its own counter and elsewhere. The force of this objection is weakened by the fact that the operations of trade carry the currency of the country to the principal mart. If the amount of its issues collected at the place assigned for redemption were to be made known to any bank, it could be required to transmit its funds to that place after a reasonable interval of time, and thus be relieved from the necessity of providing an equal amount to meet demands at home. If this system should receive legislative sanction, the comptroller might be required to apply the safety fund without delay to the redemption of the balance which a bank had neglected or refused to pay after receiving the requisite notice, if such balance did not exceed a just proportion of the whole fund. This system has been partially in operation, and is understood to have been very successful. These suggestions are submitted in the hope that they may be useful in your discussions of this important subject.

The necessity of a revision of the general banking law, as recommended in my annual message at the last session, has greatly increased during the past year. It is alleged, and with too many evidences of truth, that the stock deposited with the comptroller as a basis for circulating notes has been in some instances purchased or paid for with the notes issued upon the same stock. Such a proceeding is manifestly an evasion of the statute, and care should be taken to guard against it for the future. Some of the associations have issued post notes as currency. This practice is unquestionably a violation of the spirit of the law, reprehensible in itself and fraudulent to the community.

It ought not to excite surprise that the system of free banking should in its commencement have been embarrassed by difficulties, or that institutions should occasionally have been established where they were not needed.

When we reflect that we have been for thirty years improving the system of banking by incorporations, we ought to exercise forbearance towards one which has just come into existence. In the midst of a pecuniary revulsion only two of the associations have been closed, and they have occasioned no loss to the community. There is, therefore, no sufficient ground for doubting the final success of the system, with those modifications which experience may from time to time suggest. Among these there should obviously be a plan for the redemption of the notes of the associated banks, similar to that suggested in reference to the safety fund banks. While the system affords all the requisite facilities and security for sound and safe banking, it is obviously so much more equal in its operation, and so much less liable to be perverted to political designs, that I trust you will omit no effort to correct its defects and ensure its successful operation.[14]

Permit me to express a confident hope that you will not add longer delay to that which has already unfortunately occurred in filling the vacancy in the representation of this state in the senate of the United States.[15]

The action of the federal government, always important, has within a few years past excited unusual interest. Under the uniform system of policy maintained from the foundation of the government our country enjoyed a career of prosperity, interrupted only by brief intervals, in which that policy was counteracted by circumstances arising out of the violation of our rights by belligerent European na-

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14 Chapter 18, passed February 8, authorized the reciprocal exchange of state stock issued under the bank fund act and bills of certain banks required to be redeemed. By chapter 202, passed May 4, each bank not located in New York, Brooklyn or Albany, was required to keep an agent either in New York or Albany for the redemption of circulating notes issued by such bank. The free banking act, of 1838, was amended in several particulars by chapter 363, passed May 14.

15 Chapter 2, passed January 13, fixed the time (the 14th of January) for the election of a senator, and on that day Nathaniel P. Tallmadge was chosen to succeed himself.

tions. The country has experienced a great change within the last three years. A pressure is felt in all its interests and throughout its whole extent, and every effort to rise has been followed by greater depression. The federal Executive, in his recent communication to congress, extends no hope of relief from these evils, but urges the adoption of measures, the very discussion of which has produced only the most disastrous consequences. We are an industrious, economical, enlightened, and virtuous people. Our prosperity is hindered by no hereditary inequalities of political rights or social condition. We have enjoyed peace and tranquillity for twenty-five years. If then there be any virtue in forms of government, ours ought, if well administered, to secure national prosperity and general contentment and happiness. The power and influence of the Executive department of the federal government are greatly increased, and the history of that government for the last few years exhibits a constant struggle on the part of the Executive to control the opinions of the representatives of the people. His appeals from their decisions have been tried by popular elections for the first, second and third time. In such trials the representative has to contend singly and unaided against the combined influence and patronage of the government. Not content with the already overshadowing powers of the national government, the President has arraigned before congress the institutions of the states and the states themselves, and has discussed their domestic concerns with as great freedom as if they were responsible to the federal government, and were not sovereign in the conduct of their municipal affairs. These innovations furnish a new demonstration of the error of those who, at the adoption of the constitution, supposed the federal government too unstable, and the power and influence of the Executive department too limited. The time seems to have arrived, when the adoption of measures to restrain the increasing power of the Executive and

maintain the necessary independence of the states should no longer be delayed. Among such measures none would be more safe, more effectual, or more in harmony with democratic principles than amendments of the constitution of the United States, which should vest in congress the appointment of the chief financial officers of government, and limit the tenure of the presidential office to a single term.

It is a source of the highest satisfaction, that notwithstanding all adverse circumstances, the prosecution of works of internal improvement with private capital has not been arrested during the past year, but has been carried on with patriotic and praiseworthy assiduity and with great success. That section of the New York and Erie railroad about fifty-five miles in length, which extends from Tappan, on the Hudson river, to Middletown in Orange county, will soon be completed. The result will, it is hoped, vindicate the whole enterprise from unjust prejudices and contribute to hasten its consummation. The Long Island railroad has been extended farther into the interior of the island. By the completion of the Utica and Syracuse and the Syracuse and Auburn railroads within the past year, only one hundred miles of railroad remain to be finished before our citizens will enjoy the facilities of a passage by steam power from one extremity of the state to the other, and the steam navigation of the remote western lakes will be connected with the steam navigation of the Atlantic. The completion of the railroad from the coal mines at Blossburg, in Pennsylvania, to the termination of the western branch of the Chemung canal, is an event of great importance to the central part of the state, and among its beneficial results we may anticipate an increase in the revenues of that canal.

The various surveys directed by the legislature at its last session, with a view to the improvement of the northern tributaries of the Hudson, to the extension of the Chemung

canal to the line of the State of Pennsylvania, to the extension of the Black river canal to the St. Lawrence, and to the construction of a canal in the valley of the Connewango, have been successfully prosecuted. I transmit brief statements which have been submitted to me by the engineers engaged in the two first named surveys. I am certain you will not withhold whatever of encouragement and support can be extended, consistently with the financial condition of the state, to our fellow citizens who feel an interest in these several improvements. I recommend a continuation of the survey of the northern branches of the Hudson as necessary to a more perfect acquaintance with the extensive region of country which will be opened to commercial intercourse by the improvements contemplated in that section of the State.

The general policy of prohibiting the transportation of freight on railroads which run parallel to the canals is not altogether without question. There can however be but one sentiment as to the expediency of suspending the prohibition during the season in which the navigation of the canals is arrested by ice. A prohibition at that season operates injuriously to the agricultural interest, and tends to produce a monopoly of the necessaries of life, at a time when want and misfortune are felt most severely by the inhabitants of our populous cities.

Apprehensions prevail that the public credit may become too deeply involved in the prosecution of works of internal improvement. The project of enlarging the Erie canal was adopted by the legislature of 1835. It arose from the necessity of repairing such parts of the canal, especially the locks and aqueducts, as were worn by time and use. With the great increase of trade, delays and inconveniences were experienced in consequence of the limited dimensions of the canal and the want of double locks. It was manifest, too, that the canal had not completely accomplished the objects of its construction, inasmuch as a con-

siderable portion of the western trade continued to seek a market by other routes. It seemed important, therefore, to increase its capacity and thereby reduce the expense of transportation. It was maintained that by the use of boats of one hundred tons burthen, instead of thirty tons, the expense of transportation would be reduced fifty per cent. In this view the expediency of the enlargement was incontrovertible, if the expense should not be disproportionate, and the requisite funds could be provided without injustice to other claims upon the public munificence. The act of 1835 directed the enlargement to be undertaken when the canal board should be of opinion that the public interest required the improvement, and its extent was submitted to their discretion. It will not, I hope, be deemed disrespectful to remark, that the first step in this great undertaking, the delegation of the legislative power to a board not directly responsible to the people, was a departure from the spirit of the constitution, so unfortunate in its consequences, that it should remain a warning to all future legislatures.[c] The expense of the enlargement is now estimated at $23,402,863; yet the law by which it was authorized passed without any estimate having been submitted to the legislature, and with scarcely any discussion. If completed on the present scale, the canal will surpass in magnitude every other national work of internal improvement; yet all the responsibilities in reference to the dimensions and cost of the enlargement seem to have been cast off as unworthy the consideration of the legislature. The same act provided that after the year 1837 the expenditures upon that work should be so limited as to leave from the canal revenues, without reference to auction and salt duties, an annual income to the state of at least three hundred thousand dollars, over and above all ordinary repairs and expenditures on the Erie and Champlain canals.

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[c] Const. 1821, art. 1, § 1.

In 1836, for the first time, an estimate of the expense of the enlargement was submitted to the legislature by the canal board, by which it was calculated at $12,416,150.17. The canal commissioners had previously estimated the expense of the Genesee Valley canal at $1,890,614.12, and that of the Black River canal at $1,068,437.20. With this information before them, the legislature of 1836 increased the annual income to be applied to the uses of government to four hundred thousand dollars. They also directed the construction of the Genesee Valley and Black River canals, and provided that their deficiencies of revenue should be paid out of the treasury, and authorized a loan of the credit of the state to the New York and Erie railroad company to the amount of three millions of dollars.

The subject was again agitated in 1837. The canal board reported that they did not believe the enlargement could be completed at the cost before estimated, for the reason that the plans of some of the mechanical work had been changed, and that parts of the line had been, and others probably would be, varied. They stated that the cost of construction was greater than when the estimates were made; that they did not believe, if prices were the same as at the time the estimates were made, that the cost of the work would exceed the estimates, except the increase occasioned by changes of the plans or of the line. They added that they could not form an opinion of the additional cost of the work beyond the estimates, but they did not believe it would amount to a large sum, exclusive of damages; that the amount would greatly depend upon the prices of labor and provisions, and that there had been no estimate of damages to individuals. They also gave it as their opinion that it was for the interest of the state to proceed with the enlargement so that it might be completed sooner than was contemplated by the act of 1835. It is evident that this report did not tend to shake the confidence of the legislature in the ability of the state to complete the public

works, since the house of assembly rejected, by an almost unanimous vote, a resolution contemplating the repeal of the laws directing the construction of the Genesee valley and Black River canals.

In 1838, the late Executive recommended a more speedy enlargement of the Erie canal. It was obvious, from the condition of the finances of the state at that time, that this could not be effected without contracting a debt. The assembly responded to this recommendation by passing a bill directing the commissioners of the canal fund to borrow on the credit of the state one million of dollars for that object. The senate amended the bill so as to authorize the borrowing of four million of dollars instead of one million. In this shape the bill became a law. This law required the canal commissioners to put under contract, with as little delay as possible, such portions of the work as were mentioned in their report of that year, and such other portions as, in the opinion of the canal board, would best secure the completion of the entire enlargement with double locks on the whole line.

It was reserved for the assembly of 1839 to discover that the estimates which had been the basis of such important legislative action during the preceding three years had been widely erroneous. The canal commissioners were required to review their estimates of the unfinished works. They reported that the expense would be as follows:

Of the Erie canal enlargement	$23,402,863.02
Of the Black River canal	2,141,601.63
Of the Genesee Valley canal	4,900,122.79
Making an aggregate of	$30,444,587.44

instead of $15,375,201.49, the original estimated cost of those works.

The practice has recently obtained to some extent of testing the expediency of any proposed improvement by adding

to its estimated cost the real and nominal indebtedness of the state, together with the sums for which the credit of the state is pledged or in any event authorized to be pledged, and of assuming that the aggregate will be the debt of the state if the proposed improvement should be adopted. This test has also been applied to the undertakings in which the state has already engaged, with the following result:

The existing canal debt for works completed, (exclusive of the Erie and Champlain canal debt, for the payment of which a fund has accumulated)	$3,476,839.66
The debt of the general fund	2,472,217.92
The aggregate sum for which the credit of the state has been heretofore pledged and directed to be pledged in aid of canals and railroads	4,610,000.00
Estimated cost of the enlargement of the Erie Canal, and the construction of the Genesee Valley and Black River canals	30,444,587.44
Making an aggregate of	$41,003,645.02

The confidence of the people in the policy of internal improvement, has sustained a severe shock from the discovery that the state was committed by the legislature to an expenditure of thirty millions of dollars, for the completion of three works alone, upon estimates of the same works rising only to about fifteen millions; and calculations exaggerating the liabilities of the state to forty millions of dollars have not been unsuccessful in adding imaginary alarm to the consequences of past errors, in themselves sufficiently embarrassing.

The only act which was passed at the session of 1839, appropriating money for purposes of internal improvement, was one directing the sum of seventy-five thousand dollars

to be expended in improving the navigation of the Oneida River. With the exception of an act authorizing a variation in the plan of constructing the locks on the Genesee Valley canal, by which a saving of about five hundred thousand dollars will be made in the construction of that work, and several acts directing surveys in various parts of the state, there was no other legislation during that session upon the subject of internal improvement. Aside from the duties prescribed by these acts, all that the agents of the state have been called to do in relation to internal improvements, has been to comply with legislative directions, given previously to the session of 1839, and to provide, in pursuance of pre-existing laws and pre-existing contracts, for the expenses incurred in the prosecution of the public works by the canal commissioners.

Such are the circumstances under which the public interests have been confided to our care. The discovery of the errors of our predecessors, has happened at a time when confidence is impaired, property depreciated, the sale of real estate arrested, and the currency disordered. At such a period the financial difficulties of the state are liable to be exaggerated, its resources undervalued, and its liabilities magnified.

In ascertaining the true financial condition of the state, there may be deducted from the debt of the general fund, the sum of $1,080,000 borrowed from the canal fund. Both of these funds being the property of the state, this is a loan made by the state to itself. We may also deduct from the liabilities of the state the pledges of its credit to railroad and canal companies, these pledges having been made upon conditions, as is understood, which afford an ultimate indemnity to the state. Regarding the Erie and Champlain canal debt as extinguished by the means provided for its redemption, the actual debt of the state, as it stood at the close of the last fiscal year, would then be as follows:

Debt of the general fund		$1,392,217.92
Debt of the lateral canals completed		3,476,839.66
Debt contracted for unfinished works, viz.:		
Enlargement of Erie canal	$2,500,000.00	
Black River canal	591,446.10	
Genesee Valley canal	2,000,000.00	
Oneida River improvement	25,000.00	
		5,116,446.10
Aggregate state debt		$9,985,503.68
But there remains on hand a balance of funds borrowed for the construction of the Genesee Valley canal	$939,604.48	
For Oneida River improvement	25,000.00	
		964,604.48
State debt over funds in hand		$9,020,899.20

The amount required to complete the enlargement, as ascertained by deducting the sum already expended and the sum borrowed and remaining in hand at the close of the last fiscal year from the last estimate made by the canal commissioners, would be	$19,292,886.93
To complete the Genesee Valley canal	2,900,122.79
To complete the Black River canal	1,550,155.53
Aggregate required to complete the canals, according to the last estimates	$23,743,165.25
The interest on this sum, at 5 per cent, would be	$1,187,158.26

The surplus revenue from the canals during the past year was $1,057,802.74. The interest, at 5 per cent, on the sum estimated as necessary to complete the canals, to wit, on $23,743,165.25, would be $1,187,158.26, exceeding such surplus revenue by the sum of $129,355.52. The surplus revenue would, with the ordinary increase, furnish sufficient funds for completing the unfinished works, if applied exclusively to that purpose. But by the laws of 1835 and 1836 an income of four hundred thousand dollars was directed to be retained annually from this surplus revenue, and the sum of $126,250, which is required to pay the interest on loans which had been contracted for the enlargement of the Erie canal and the improvement of the Oneida River at the close of the last fiscal year, is chargeable upon the canal tolls. Deducting these items, there is left a surplus of $531,552.74, applicable to purposes of internal improvement, which leaves a deficiency of $655,605.52 in the amount necessary to meet the interest on the sum required to complete the works now in progress according to the corrected estimates. Stating the result in another form, the net annual revenue of the state, applicable to purposes of internal improvement, without taking into consideration the anticipated increase of canal tolls, would sustain a debt of only $10,631,054.80, while the sum of $23,743,165.25 would be required to complete the public works.

The state, however, may confidently anticipate an increase of canal tolls, and consequent increase in the revenue of the Erie and Champlain canal fund. This increase, although not contingent, is of uncertain amount. Since the year 1826 it has averaged about eighty thousand dollars annually. This augmentation of tolls must progress with the increase of commerce upon the western waters, which would be greatly accelerated by the enlargement of the Erie canal.

Various opinions are entertained as to the future net annual increase of the canal tolls. In 1838 the canal commis-

sioners reported to the legislature that, in their opinion, the aggregate tolls would reach the sum of three millions of dollars within a few years after the completion of the enlargement. Without attempting to speculate upon a point so incapable of demonstration, it is sufficient to remark, that every opinion admits the certainty of an increase to an amount that will be adequate, at some future period, to pay the interest upon the largest sum which the exigencies of the State require, while no calculation that is based upon the actual increase of canal tolls during the last three years alone will justify the prosecution of the works now in progress with the rapidity which, in the opinion of the legislature of 1838, was warranted by the fallacious estimates of the canal commissioners. The question then arises, what, under these circumstances, shall be the policy of the legislature?

Waiving in this place the consideration of remote consequences, it may be asserted that the public interest does not now demand, nor would the immediate welfare of the people admit, the abandonment of the system of internal improvement. During the severe pressure we have experienced, the industry of the citizen has been stimulated, and the wages of labor, the prices of the products of the earth, and the value of property have been sustained by expenditures in the prosecution of this system. The sudden arrest of such expenditures, and the discharge of probably ten thousand laborers, now employed upon the public works, at a time when the circulation of money in other departments of business is so embarrassed as almost to have ceased, would extend throughout the whole community, and with fearful aggravation, the losses and sufferings that as yet have been in a great measure confined to the mercantile class. These losses and sufferings would fall with peculiar severity upon the agricultural portion of the community, because the laborers, if discharged, would generally seek subsistence in agricultural pursuits, instead of being, as

they now are, consumers of the abundance which contributes to produce a depreciation of the value of our staple productions. Nor does it appear that our fellow citizens in various parts of the state, whose desires for the advantages of internal improvement have been so intensely excited and so earnestly expressed, have determined to forego those advantages, because precipitancy has characterized the past management of public affairs, and because their hopes, on the eve, as they supposed, of being realized, have encountered new and more embarrassing discouragements.

The policy indicated by public sentiment, and demanded by the circumstances of the times and the condition of the state, is to retrench the expenditures upon our works of internal improvement and prosecute the system with moderation and economy. It is essential not only to the rightful action but to the stability of the government, that the will of the people, when clearly expressed, should be obeyed by their representatives. This principle is peculiarly important in relation to questions of revenue and expenditure. Public opinion is, moreover, manifestly right. The existing and anticipated revenues of the canals must be, as heretofore, the basis of any new loans which the legislature shall see fit to authorize, since taxation for purposes of internal improvement deservedly finds no advocate among the people. These revenues have been disturbed in the general derangement of pecuniary affairs, and cannot now be the basis of that safe calculation, without which it is hazardous to pledge to a great extent the credit of the state. Nor can we resist the evidence that the credit of some of the states is less firm than heretofore. It is worthy, therefore, of serious consideration whether our own might not be impaired by offering large amounts of stock in a market already filled with American securities. It is doubted whether the Erie canal would not have been adequate for all useful purposes if the scale of enlargement had been much less extensive than that fixed by the canal board, and it is cer-

tain that smaller dimensions, or a more tardy enlargement, would have been adopted, had the estimates of the canal commissioners presented truly the cost of the work. You will, however, find the question of reducing its dimensions embarrassed by the fact that about one half of the work has been accomplished or put under contract. The parts of the work which are peculiarly expensive are the aqueducts and locks, and these have engaged the earlier attention of the commissioners in consequence of the decay of the old structures, which threatened a suspension of navigation. It is evidently impossible now to secure, with equal expense, the same advantages that might have been obtained by adopting a more limited scale of enlargement in the first instance. It is, however, respectfully submitted whether it would not be expedient to refer the plans of all the works in progress, including the enlargement of the Erie canal, to competent engineers, to ascertain what portions of the same may be delayed without detriment to the public interest, and what expense may be saved by executing other portions in a manner equally effective and durable but more plain and economical than that hitherto pursued. It seems quite certain that if the legislature had enjoyed the services of a board of internal improvement, including competent engineers, no such delusive estimates would have become the basis of legislative action. I would recommend the establishment of such a board as one of the first measures for retrieving our former position. For the purpose of guarding against a dangerous increase of debt and the possibility of taxation, I respectfully recommend that all issues of stock shall be so limited that the interest on the whole debt of the state shall at no time exceed its surplus revenues, and that the increase of those revenues be relied upon for the ultimate extinguishment of the debt. The adoption of this principle, there is reason to believe, would be sustained by the people, and it would place our credit on the most impregnable ground. Although its effect might be to delay

for a season the progress, it would ensure the completion of those great works in contemplation in different parts of the state, and which a very large portion of our fellow-citizens continue justly to regard with unabated interest.

It is proposed in some quarters to effect the necessary retrenchment by discontinuing the Genesee Valley and Black River canals, and by abandoning such of the auxiliary canals already completed as cannot, by increasing the rates of toll, be made to yield a revenue equal to the interest on the cost of their construction. It might well be doubted whether the Genesee Valley and Black River canals would have been undertaken thus early had true estimates of their cost been submitted to the legislature, and had the prospective engagements of the state been truly understood. If we consider the sacrifice that would be made of the sums already expended, and the claims for damages which may reasonably be apprehended if these works should be discontinued, such a measure would be as questionable on the ground of economy, as it is objectionable on principles of justice to the large portions of the State interested in their completion. The value of property in their vicinity has undoubtedly greatly increased, business has adapted itself to the facilities they have created, and none but the most disastrous consequences could follow their abandonment.

The construction of the several auxiliary canals was authorized without a confident expectation of immediate revenue. The legislature deemed it just to equalize the advantages of internal improvement by means of important lateral works, where the revenues to be derived from them directly, and their contributions to the Erie canal, might be expected to be equivalent, after a reasonable lapse of time, to the interest upon the cost of their construction. It was assumed, also, that the system might be extended, so long as the revenues of all the public works should be found sufficient to defray the expenses of their mainte-

nance, yield a surplus adequate to pay the interest upon the whole debt contracted for their construction, and eventually discharge the principal. These limits have been observed in the construction of all the public works which have been completed, although fears are expressed lest they may be passed in the undertakings now in progress. There would therefore be gross injustice, in abandoning the Oswego, the Cayuga and Seneca, the Chemung, the Crooked Lake and the Chenango canals, and thus visiting upon the regions enriched by them the consequences of errors of calculation in regard to works undertaken subsequently to their completion. It is true that each of these canals, considered separately from the Erie canal, yields a revenue insufficient to defray the interest on its cost. But their revenues are increasing, and their deficiencies are diminishing. The rates of toll upon them are the same which are established upon the Erie and Champlain canals. Unless an universal law of trade should be reversed, their business, now insufficient, and consequently their revenue, would be diminished by raising the rates of toll. A ruinous depreciation of property in the regions which they traverse would inevitably follow, and the legislature would soon be obliged to reconsider a measure of such questionable policy and absolute injustice. Nor is it to be forgotten that these works have scarcely as yet had a fair experiment. The increase, however, in the revenue of the Oswego canal during the past year, justifies the belief that it will soon defray the interest upon its cost. The laws authorizing the construction of the lateral canals looked forward to an extension of their trade by connecting them with similar improvements beyond the state. However distant it may be, that connection must eventually take place. These canals will then no longer be regarded as exhausting the wealth of the state. Their construction will be vindicated not only by their promotion of the general prosperity, but also by their liberal contributions to the public treasury.

In my annual message at the last session of the legislature, I recommended the rapid prosecution of the enlargement of the Erie canal. I commended also to favorable consideration the New York and Erie railroad, and a railroad from Lake Champlain to the St. Lawrence, as works of great public importance, and worthy, if they could not be otherwise speedily accomplished, of being constructed at the expense of the state. My opinions in relation to the public importance of these and all other improvements commended on that occasion are unchanged. I am moreover convinced that the difficulties as well as the cost of these improvements have been as greatly exaggerated as their probable revenues have been undervalued, and the just claims of the portions of the state interested in their construction have been overlooked. It is no longer doubtful that railroads may be constructed by the state as suitably as canals, and that the public convenience requires that the former as well as the latter should as far as practicable be controlled by the state. It is probably unnecessary to remark that the recommendations then submitted to the legislature to expedite the enlargement of the Erie canal and to provide for the immediate completion of the works before mentioned proceeded on the assumption of the substantial correctness of the various estimates of the canal commissioners, which are discovered to have been so very erroneous.

Our fellow citizens residing in the portions of the state which will be traversed by the railroads before mentioned are alarmed by the great expense of the enlargement of the Erie canal, while those interested in the accomplishment of the latter undertaking regard with disfavor other applications for legislative aid. These jealousies, the obvious tendency of which is the disappointment of every claim upon the public munificence, have given new confidence to the opponents of all improvements. I cannot doubt that your views and policy will be comprehensive

and magnanimous, and have reference not to local or temporary interests, but to the general and lasting prosperity of the state. I confidently hope that the unexpected discovery of the extent to which the engagements of the state have been carried by former legislatures may produce such moderation on the part of those who claim to share in the public munificence, such concessions of local interests, and such convictions of the importance to the whole state of the improvement of each section, as to enable you to adopt a plan of fiscal operations which will reinvigorate the public credit, and effectually secure the completion, without unnecessary delay, of each of the important works before mentioned. The retardation which has become necessary ought by no means to be considered as an abandonment of the policy of internal improvement. It is the fortune of enterprise to encounter obstacles and delays in the attainment of even demonstrable results, and certainly no undertaking so vast as our system of internal improvement was ever more eminently successful, or encountered obstacles less serious than those which now check its prosecution.

The present crisis has produced renewed opposition to the entire system. It is boldly denounced as unconstitutional, foreign to the legitimate sphere of legislative action, destructive of the liberties of the people, and ruinous to their welfare. The specious theory is promulgated that the duration of national existence is divisible into periods corresponding with generations of men, and that the state has at no time a right to undertake the construction of works which will leave a charge upon a subsequent generation. It is a necessary consequence of these principles that the entire system must be abandoned, and that the obligations assumed in its prosecution may be cast off by subsequent generations. These principles have been boldly avowed, and have tended to impair the confidence of mankind in the integrity and good faith of the people of this state, but they derive no support from our history. Reason and ex-

perience teach that every human society has a continuous identity susceptible of indefinite prolongation, and incapable of division. The citizen of every state feels, as it has been well said, that although mortal himself, he is part of a community that may, and he hopes will, be perpetual. He is conscious that every important measure of government in which he may be engaged is in some degree the result of causes anterior to his own existence, and may be productive not only of consequences immediately affecting himself and his contemporaries, but of others pervading the whole state, and distant as its dissolution. The daily labors of life, although stimulated by immediate necessity, are cheered by the expectation of distant good. The generous efforts of public benefactors, by whose inventions, instructions, and achievements, our race has been raised from the savage condition, through every imperfect social state, to the freedom and dignity of self government, have always been directed to objects more remote than those of immediate or personal advantage. Benevolent desires for the welfare of those who shall succeed us produce not only individual and domestic exertion, but social action in every form adapted to relieve the necessities or promote the welfare of mankind.

Animated by such impulses, and aroused to such efforts with reference to distant periods, men seem to approximate here towards the dignity of character to which our race is destined in a future state. The susceptibility to such impulses and the power of making such efforts are among the strongest proofs that such a state awaits us. The human heart knows few passions stronger or more universal than the desire to be remembered when we shall have ceased to exist, and it estimates the value of fame by the lapse of time through which that fame may endure, and the portion of the earth it may pervade. The motives and achievements of the revolutionary age knew no such miserable bounds as those now prescribed. Our national inde-

pendence was sought and obtained not alone for those who achieved it, nor for one generation only, nor for a narrow cycle of years, nor for any period, but for all generations and for all time. Our republican institutions were designed at their foundation not alone for three millions of American people, but for us, and for as many millions as shall in all time rise up and demand their protection. No citizen can be deprived of that protection because he was not of the generation by which it was guaranteed, and no disloyal citizen can excuse his delinquency by pleading a limitation of allegiance. In the great struggle for independence the inquiry was not raised, what generation shall sustain the expense of the conflict? During the period of almost sixty years occupied in paying the debt which was incurred no citizen questioned its justice. The principle of internal improvement derives its existence from the generous impulses of the revolutionary age. It regards the future welfare, prosperity and happiness of the people. Its agency is everywhere felt to be salutary in encouraging emigration and the settlement and improvement of new lands, in augmenting national wealth, in promoting agriculture, commerce, manufactures and the diffusion of knowledge, and in strengthening the bonds of our national union. It is recited in the declaration of independence, as one of the wrongs committed by the king of England, that he had endeavored to prevent the population of these states, and for that purpose had obstructed the laws for the naturalization of foreigners, had refused to pass others to encourage their migration hither, and had raised the conditions of new appropriations of lands. The father of his country had none of the modern scepticism when, in his first message to congress, he recommended a facilitation of the intercourse between distant parts of the country, by a due attention to the postoffice and post roads. The population of the United States was confined for almost two centuries to the Atlantic coast, but the mighty mind of

Washington perceived that a region far more extended, fertile and salubrious, lay beyond the borders of the thirteen states; that inasmuch as the sovereignty of the Union was distributed among the cultivators of the earth, the political power of the government would find a center in that region; that if the natural barriers between that region and the east should remain unchanged, the west would at no distant period cast off its union with the maritime states; but that if the natural barriers could be surmounted by roads and pierced by canals, connecting its inland navigation of lakes and rivers with tide water, the wealth and population of the whole country would be vastly increased, and the states be bound in an indissoluble union of interest and affection. Imbued with these sentiments, he stopped not in his farewell address to discuss or to recommend his favorite policy, but boldly predicted, as a certain event, that progressive improvement of interior communication by land and water, the auspicious results of which are only just beginning to be realized. It is a fact as interesting as it is instructive that the solicitude of the father of his country knew no rest after the achievement of her independence, but passed directly from the cares of that great struggle to the greater and even more glorious work of strengthening the Union of the states, and perpetuating their liberties. In 1783, immediately after the close of the war, he proceeded up the difficult navigation of the Mohawk to Fort Stanwix, now the site of the town of Rome, and crossed to Wood Creek, which empties into Oneida Lake, and affords an imperfect communication with lake Ontario. The noble and patriotic sentiments inspired by his observations were thus expressed: "taking a contemplative and extensive view of the vast inland navigation of the United States, I could not but be struck with the immense diffusion and importance of it, and with the goodness of that Providence who had dealt his favors to us with so profuse a hand. Would to God we may have wis-

dom to improve them!" The connection of Lake Ontario with the Hudson by perfect canals, instead of the difficult and obstructed navigation of the Mohawk and Wood Creek, the mingling of the waters of lake Erie with those of the same noble river by means of a canal, the conversion of Fort Stanwix into the center of a constellation of cities and villages, with all the consequent benefits of these improvements, reflect additional glory upon the fame of Washington, and prove that the efforts of this state in fulfillment of his noble aspiration have been crowned with the blessing of that Great Being to whom it was addressed. His contemporary, Jefferson, one of the most sagacious of American statesmen, as well as one of the most ardent votaries of liberty, pronounced roads, canals, and rivers to be the great foundations of national prosperity and union, and recommended to congress the policy of applying the surplus revenues arising from imposts upon luxuries and from the sale of the public lands to the great purposes of public education, the improvement of the navigation of rivers, the construction of roads and canals, and such other objects of public improvement as it might be thought proper to add to the constitutional enumeration of federal powers; operations by which, as he well remarked, new channels of communication would be opened between the states, the lines of their separation would disappear, their interests would be identified, and their union cemented by new and indissoluble ties.

It is worthy of remark that none of the distinguished founders of American liberty stopped to calculate the question of revenue when they recommended this enlightened policy, designed to increase the prosperity and cement the union of the states. The distinction between internal improvements and measures of public defence, upon the ground that the former cannot as rightfully be carried on with the revenues of the state or the use of its credit as the latter, is a refinement of modern times. The statesmen of

the revolution evidently regarded free intercommunication as one of the means of national defence. Had it been then understood, as is now asserted, that internal improvement is a departure from the legitimate power of government, the opposition of the British king to emigration, and his raising the conditions of new appropriations of lands, would have found no reprobation in the Declaration of Independence, and the improvement of roads and rivers at the public expense would not subsequently have obtained an equal place with the promotion of education in the executive recommendations of Washington and Jefferson. No such absurdity was then conceived as the proposition that while a nation may employ its revenues and credit in carrying on war, in suppressing sedition, and in punishing crime, it cannot employ the same means to avert the calamities of war, provide for the public security, prevent sedition, improve the public morals, and increase the general happiness. All the questions now raised were deliberately and decisively settled in the adoption of the policy of internal improvement by this state in 1817. The estimated cost of the Erie and Champlain canals was six millions of dollars, and the whole sum was required to be expended within seven years. The revenues of the state were at that time inadequate to defray the ordinary expenses of the government without a resort to direct taxation. In this emergency the only question raised, was upon the ability of the state, not upon its right to employ its credit. Unconscious of their resources, the people of this state alternately appealed to the federal government for its all-sufficient aid, and tendered to other states a munificent participation in the fruits, as an inducement to them to share the risks of the enterprise. Notwithstanding the failure of both appeals, no opponent was encouraged to inculcate, as is now profanely held forth, that the attempt to overcome the physical barriers to intercourse between the different regions of the state was an encroachment upon the Divine

prerogative. It was resolved on the contrary, that whether the great enterprise was regarded with a view to commerce and finance, or on the more extensive scale of policy, it would evince a want of wisdom and almost of piety not to employ for public advantage those means which providence had placed so completely within their power. They looked into futurity and attentively listened for the warning which it might send forth, but far from hearing, as is now insanely imagined, the cries and curses of unborn millions, and the maledictions of their own descendants, they were cheered on by voices which assured them that their young and enterprising state would soon be without a rival, that the commerce of half the world would be hers, that posterity would bless forever those who should commence and prosecute the great enterprise to its consummation, and that contemporaries would vindicate its chief defender against the assaults of his enemies. It was then asserted, as dogmatically as it is now, that taxation and ruin would be the consequences of internal improvement, and estimates of revenue, the correctness of which time has already triumphantly vindicated, were denounced as visionary and chimerical. Phantoms of debt were then, as now, conjured up to an aggregate of boundless millions, and ingeniously apportioned among the citizens, as such debts now are, by imaginary assessments according to the latest census of the state. Notwithstanding all these discouragements, the work was undertaken, stocks were issued redeemable by a subsequent generation, and revenues then existing, revenues created for the purpose, and revenues anticipated from the works to be constructed, were all devoted to the payment of the interest and the extinguishment of the debt. In 1821, the people, by their representatives, assembled to revise their constitution. The canals were still unfinished, and their results uncertain. Yet no such absurdity was proclaimed as that of excluding internal improvement from the subjects of legislative action, nor was the dishonest sug-

gestion of repudiating the public debt for a moment entertained. On the contrary, all that had been done was approved, and the convention, with integrity characteristic of a just, generous, and enlightened people, incorporated into the constitution the pledges which had been given by the legislature to the public creditor, and made them thenceforth and forever a part of the organic law of the state.[d] These pledges have been sacredly preserved. Ample funds, received from the revenues originally devoted to the enterprise, have accumulated and been set apart for the payment of the debt, although the day for final payment has not yet arrived, and those funds now await the public creditor, a rebuke to terrorists who predicted eternal taxation.

The construction of such works by associations incorporated by the legislature is denounced as no less unconstitutional and dangerous than their prosecution by the state; and a stranger to our institutions would suppose, from the violence with which all such associations are assailed, that they are innovations upon well settled principles of government. The opponents of internal improvement object to its prosecution by the general government, by the state governments, or by incorporations, and would leave it to be carried on only by individual enterprise and with private capital. It is manifest that inasmuch as there are no private fortunes among us adequate to such enterprises, the exclusion of legislative action and that of corporations would be equivalent to an absolute prohibition of the system. Such associations had their origin in the necessities of a scanty population, dispersed over a broad territory, requiring extensive improvements, and yet enjoying wealth, limited indeed, but distributed with great equality. They are founded upon that principle of social labor which always obtains in the settlement of new countries. Since it is always their design to invite emigration and stimulate

[d] Const. 1821, art. 7, § 10.

business rather than to provide comforts or facilities for a population already dense, their works are not unfrequently profitless. They are to be considered rather as agents in equalizing and rendering available the contributions of individuals for the public benefit than as monopolies of wealth. The same principle and form of association are adopted in every other department. Our manufactures are carried on by similar agencies, and our colleges, our public charities, and even our religious societies are corporations. Their agency has always been employed in constructing works not deemed of sufficient importance to warrant their assumption by the state, and yet of too great magnitude to be constructed by individuals. When the necessities of the country were greatest, their agency was most freely employed and encouraged by the most liberal charters. As those necessities diminish, they are properly regarded with greater jealousy, and the powers and privileges conferred upon them are more carefully restricted. Those who unite in such associations under the sanction of law for purposes of public improvement, necessarily incur the censure of others who happily excuse themselves from every contribution or sacrifice for the public welfare, upon the ground of their objections to the prevailing forms in which such contributions and sacrifices are made. But they may offer in extenuation of their error, that the sublime repose of the father of his country was occupied with plans of internal improvement which were to be carried out by means of similar agencies, and that even he did not deem it derogatory to his fame or patriotism to be the president of a canal company, after having worn the highest honors of the republic.

The policy of loaning the credit of the state to such associations is condemned with unmeasured severity, and you will be required from some quarters to repeal all the laws by which such loans have been authorized. This policy had its origin in 1827, and was thus explained and defended in

1829 by the distinguished citizen who then filled the executive chair of this state, and now administers the government of the United States. In his annual message to the legislature he observed, "It will doubtlessly be attentively considered how far the public burthens arising from the construction of works of internal improvement may be relieved, and the efforts of the state judiciously aided by the encouragement of individual associations for the same purpose. The leading case in which this policy has of late years been adopted, was that of the Delaware and Hudson Canal company. It gives me sincere pleasure to be able to inform you that it has in this instance been crowned with the most cheering success. The cost of this canal is said to have been one million eight hundred and seventy-five thousand dollars, and of that sum five hundred thousand dollars have been obtained upon the credit of the state, which holds for its security the first lien upon the canal. There is no reason to apprehend the slightest loss or inconvenience from the measure adopted to assist the company. How far you can, consistently with other claims upon your favor, extend the relief they ask, will, I am confident, receive an impartial and just examination and decision at your hands." An additional loan of the credit of the state to the Delaware and Hudson canal company to the amount of three hundred thousand dollars followed this recommendation. The policy has been further carried out by loans to railroad companies. Capital to an amount equal to the sums for which the credit of the state is pledged has been derived from Europe. Upon the inducement held out by the legislature, it has been paid to citizens of this state, and expended by them in the construction of works of internal improvement with a view to the profit of our citizens, and the improvement and advancement of portions of the country which have not participated equally with other regions in the benefits of works constructed by the state. I will not stop to present the ruinous effects which a repeal of the

laws in question would visit at this crisis upon the prosperity of the state. If to maintain the public faith inviolate it were necessary to argue from the inconveniences which would result from its violation, that faith would not be worth defending. The people of the state are intelligent and enlightened; their legislature is elected by their free and universal suffrage; they understand fully the measures discussed at the capital; and their constitution secures accountability by bringing before them at short and stated periods their representatives in every department of the government. It is among the happy results of American constitutions, that the people have proved themselves more watchful in the guardianship of the public treasury, more enlightened in the selection of objects of public munificence, and more scrupulous in the discharge of national obligations, than those who have administered any other form of government. It is not from such a people that a violation of the public faith is to be apprehended. The proposition to repeal these laws, if made at any other time, would have passed unnoticed; but when presented at a crisis like the present, it seems to proceed from a perverseness of moral sentiment, the very recklessness of which is ordained by a wise Providence as the most effectual security against its evil designs.

Within the period of twenty-three years which has elapsed since the adoption of the policy of internal improvement, the following works have been completed, and are now in successful operation. The Erie canal, connecting the Hudson river at Troy and Albany with lake Erie at Buffalo, 371 miles long; the Champlain canal, connecting the same noble river, at the same points, with lake Champlain at Whitehall, 79 miles; the Oswego canal, connecting the Erie canal at Syracuse with lake Ontario at Oswego, 38 miles; the Cayuga and Seneca canal, opening a navigation from the lakes thus named to the Erie canal at Montezuma, 23 miles; the Delaware and Hudson canal, from

Rondout on the Hudson to the Delaware river, 81 miles, and continued by railroad to the coal beds of Pennsylvania; the Crooked lake canal, connecting the Crooked lake with the Seneca lake, and thus with the Erie canal, 8 miles; the Chemung canal, connecting the Chemung river at Elmira with the Seneca lake, and thus with the Erie canal, 23 miles, with an extension to Corning, 16 miles; the Chenango canal, connecting the Susquehannah river at Binghamton with the Erie canal at Utica, 97 miles; a continuous line of railroad from Albany to Auburn, 170 miles; a similar line from Lockport to Lewiston and Buffalo, 47 miles; a railroad from Rochester to Batavia, 35 miles; a railroad from Schenectady to Saratoga Springs, 21 miles; a railroad from Troy to Ballston Spa 25 miles; a railroad from New York to Harlem, 8 miles; a railroad from Brooklyn to Hicksville, on Long Island, 27 miles; a railroad from the termination of the west branch of the Chemung canal to the Tioga railroad in Pennsylvania, 14 miles; a railroad crossing the ridge between the Susquehannah at Owego and the Cayuga lake at Ithaca, 29 miles; and a railroad from the line of Massachusetts at West Stockbridge, to the city of Hudson, 30 miles. These works constitute the internal improvements which have been made in this state, exclusive of turnpikes, macadam and common roads. They collectively exhibit 736 miles of canals, and 406 miles of railroads. All the canals, except the Delaware and Hudson, were constructed by the state, and all the railroads, together with the Delaware and Hudson canal, were built by incorporated associations. From the various acts by which their construction was directed or authorized the following principles may be deduced as settled in the policy of the state: that it is not only the right, but the bounden duty of the legislature to adopt measures for overcoming physical obstructions to trade and commerce in this state, and for furnishing to each region, as far as reasonably practicable, facilities of access to the great com-

mercial emporium of the union, fortunately located within our own borders; that whatever contributes to increase the prosperity of the city of New York is beneficial to every part of the state; that it is of paramount importance to provide such channels and thoroughfares as will render tributary the trade of other states, and especially that of the territory bordering on the shores of the great western lakes; that it is just and wise to equalize the advantages of internal improvement by the construction of auxiliary or lateral works, as far as the physical formation of the country and a judicious use of the public funds will permit; that the legislature may direct the construction of such works at the expense of the state, or authorize their construction by associations, and may aid them by loans of the credit of the state upon conditions of perfect indemnity; that taxation for purposes of internal improvement must necessarily be unequal, and would become oppressive, that the system can be carried on to the full extent of the exigencies of the state with a judicious use of the revenues to be derived from the public works themselves; and that it must at no time be so far extended as to hazard the necessity of taxation to pay the interest or principal of the debt created for that purpose.

Let us next inquire what have been the financial results of this policy, so far as it has been carried in the construction of works already completed. The cost of all the completed public works has been $12,072,032.25, which sum was borrowed chiefly at five per cent. Of this amount, excluding the Erie and Champlain canal debt, for the payment of which a fund has accumulated and been set apart, there remains unpaid the sum of $3,476,839.66, which is not yet due. The surplus revenue from the canals during the last year was $1,057,802.74. This revenue is sufficient to pay the balance of the debt for their construction, with interest thereon in less than four years, and is equal annually to almost nine per cent upon the entire cost of all the canals.

It is surely not unworthy of consideration, that these results have been attained with the use of capital which otherwise would not have reached our shores. Nor ought it to be forgotten that the policy has also called into action associated capital to the amount of about nine millions of dollars, which has been expended in the construction of public improvements, by which the value of agricultural productions has been sustained, labor encouraged, industry stimulated in all its departments, and new facilities of communication opened in various parts of the state.

But how unimportant is the increase in the revenues of the government compared with the more extensive commercial, agricultural, and political results affecting the social condition of the people of this state. The navigable waters of the state, open to direct commerce with the city of New York in 1817, scarcely exceeded three hundred miles in length. It is less than forty years since Quebec was generally regarded as the destined mart of the northern regions of this state, and Baltimore and New Orleans confidently anticipated the trade of our southwestern frontier. The commerce of the state has now its wharves on the shores of her lakes, rivers and bays, along an extent of twelve hundred miles, to which must be added four hundred miles of canals in other states, and three thousand miles of lake coast, accessible through our artificial channels. By means of these improvements, the advantages of navigable communication with the city of New York have been distributed over a territory of twenty-five thousand square miles, equal to one-half of the surface of the state, and already sustaining more than one-half of its population. Their effect in equalizing the local advantages of the different portions of the state is proved by the facts that the average population, per square mile, of the regions thus opened to commercial intercourse is forty-eight, while that of the regions not thus accommodated is only seven.

Buffalo and Oswego, Binghamton and Elmira, which nature seemed to have excluded from commerce with New York, now enjoy greater facilities of access than Utica did before the canals were made; and Chicago, a thousand miles distant, exchanges her productions for the merchandise of the same city, at less expense and with less delay than Oswego could have done at the same period. The wheat of Chautauqua county, on the border of the state, displaces that staple on the shores of the Hudson; and Orange and Dutchess cheerfully relinquish its culture for the more profitable agriculture required to furnish the daily supplies of a great city. Lumber from Tompkins and Chemung, and ship timber from Grand Island, supply the wants of the city of New York. Iron from the banks of the Ausable is exchanged for the salt of Onondaga. The gypsum of Madison and Cayuga fertilizes the fields of Pennsylvania, and the coal of that state is moving to supply the place of the forests of the west. Railroads have immeasurably increased the facilities of intercourse and expedited the transmission of intelligence. Political influence and power are distributed among the cultivators of the earth, and our state, from an inferior position, has risen rapidly to unquestioned ascendency in the Union. The clouds which so often rise over the commercial cities of Europe cannot cast a permanent gloom over the prosperity of a state, which, according to the sentiment of Jefferson, has wisely secured herself by the improvement of roads, canals, rivers, education, and the other great foundations of national prosperity and union. A people thus enriched will not abandon the system to which they owe their wealth, because the agents by whom it has been conducted may have erred or been unfaithful; nor will they be stopped in their career by obstacles which time must diminish and enterprise will overcome. The prudence, moderation, and economy which are now recommended will only reinvigorate our energies and confirm our ability

to prosecute this system until every part of the state shall enjoy its inestimable advantages. The pressure which has fallen upon the country cannot long continue. No commercial fluctuations here or abroad can permanently repress the enterprise of the people, or check the progress of the state in wealth and population. Our canal revenues improve even under the most adverse circumstances, and although they may be stinted in their increase for one year or for two years they will soon regain their progressive power.

Unlike other communities, this state borrows no money for purposes of war or defence, to pay salaries or pensions or the interest or principal of former loans, or even to endow institutions of learning, benevolence or religion. Her income is sufficient for her wants, without taxation; the value of her productive property is double the debt she owes; her surplus income is double the interest she is required to pay; and the revenues derived from her canals, if judiciously managed, will be adequate to every enterprise which the interests of the people shall demand.[16]

The rapidity with which the system of internal improvements shall be prosecuted, and consequently the period at which its full advantages shall be realized, depend not altogether upon the legislature. The federal government holds in trust for the states almost a thousand millions of

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[16] Chapter 37, passed March 3, authorized commissioners of the canal fund to borrow $500,000 to be used in the enlargement of the Erie canal. Chapter 161, passed April 25, also authorized a loan of $2,000,000 for the Erie canal enlargement. The same act authorized a loan of $500,000 for use in constructing the Genesee Valley Canal, and $250,000 for the Black River canal. Chapter 258, passed May 11, authorized the canal commissioners to purchase the Oneida Lake Canal and feeder and appurtenances at an expense not exceeding $50,000. Chapter 280, passed May 13, authorized the purchase of the Junction Canal between Troy and Lansingburgh at an expense not exceeding $10,000. A concurrent resolution was adopted, granting to the federal government the consent of the Legislature to construct a ship canal around the falls of Niagara. Several other canal acts were passed relating to administration and the improvement or completion of some of the smaller canals.

acres of land, the value of which, at the lowest government price, is one dollar and twenty-five cents per acre. This immense domain, the property of the states, was ceded by them to the general government, as their trustee, for their common interest and benefit. In 1790, congress very properly pledged the avails of the public lands for the payment of the national debt. That debt has been discharged. The revenues which the federal government derives from imposts should be sufficient for all its expenses, and that government has no legitimate right to use the proceeds of the public lands. It neither constructs works of internal improvement nor establishes systems of education. The state governments are charged with these responsibilities, and with the regulation of their own municipal affairs. The sum which has been received into the federal treasury from the sales of lands exceeds fifty millions of dollars. A bill passed both houses of congress, making a distribution of these proceeds, but was lost for want of the Executive approval. The proportion of these avails which equitably belongs to this state would relieve her from the necessity of delaying or postponing the prosecution of any one of the public works already undertaken, and would enable her to assume others in which her citizens have engaged. Her interest in the immense domain remaining unsold is a resource which would enable her to extend her improvements, until no dwelling within her borders shall be distant more that fifteen miles from means of rapid communication.

New York need not solicit the federal government, as is proposed in some quarters, to assume or guarantee the payment of the debts of the several states, upon a pledge of the public lands. Her credit needs no such extraneous support, and her enterprise might be crippled by the national guaranty of the credit of other states, upon whose legislation she can have no check. Her interest is the common interest of all the states. Her prosperity is indissolu-

bly connected with theirs. Her works of internal improvement, magnificent as they may be, will nevertheless only constitute a part of that great system which the enlightened mind of Washington foresaw would open channels to the Atlantic coast for the productions of the west, and bind the states in indissoluble bonds of affection and interest. Her prosperity is increased by all that advances that of any of her sister states, and she suffers soon and severely every calamity that falls upon them. She learns with surprise from the annual message of the President of the United States, that although the federal government has unlimited possession of the imposts upon foreign commerce, and derives fifteen millions annually from the city of New York alone, its revenues from that source are deemed insufficient for its ordinary expenditures. She hears with astonishment the suggestion made by the President, in violation of every principle of enlightened economy, of magnanimous policy, and of the well established and often recognized conditions of the trust, to consume the revenues arising from the sale of the public domain for the ordinary purposes of government, and thus prodigally waste, in temporary and often needless and extravagant expenditures, the richest inheritance that Providence ever bestowed upon any people. The canals of this state have opened the way for emigration to that domain, have furnished facilities for the transportation of its productions, have immeasurably enhanced its value, and thus have greatly contributed to increase the revenues which it has poured into the national treasury. She may, therefore, with peculiar justice, demand a division of those revenues, and a partition of the national domain. The wants of many of the states will induce a more favorable consideration of a policy so eminently enlightened, just and equal, and it cannot be reasonably doubted that the voice of the people of this state, if clearly expressed in its favor, would meet with a response from every part of the union.

It is demanded not only upon the grounds of justice and financial expediency, but by considerations deeply affecting the public liberty and the maintenance of our institutions, since the possession of this domain, and the control of the large revenue derived from it, cannot fail to increase the preponderance of the federal government and diminish the just and necessary power and sovereignty of the states.[17]

The cursory view which has been taken of the condition of the state, and the measures requiring your consideration, was perhaps unnecessary to produce a conviction that you have been called to your high trusts at a period when you will be embarrassed by extraordinary difficulties, and when your discharge of those trusts will be regarded with great solicitude. It is not a time to aggravate existing evils by sudden and violent changes of policy, bold experiments, or rash innovations. The immediate welfare of the people and their permanent prosperity will be better promoted by a steady adherence to the settled policy of the

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[17] The Legislature adopted in April, the following concurrent resolutions:

"*Resolved*, That the public lands, the national domain, is the common property of all the United States, 'and of right constitutes a common fund for their common use and benefit, and ought to be faithfully disposed of for that purpose, and for no other use or purpose whatever.

Resolved, That we protest against the surrender of this common property of all the States to a portion of them, as unjust in the abstract, as in direct violation of the uses and purposes for which it was ceded to, and the conditions on which it was accepted by the United States.

Resolved, That we protest against the sale of those lands, at a price below the present minimum, as a virtual violation of the trust and pledge under which they were received, as wasting the common fund, and by inducing, exhausting emigration from, and as diminishing the value of the lands of the old states.

Resolved, That it is not to be endured, that a government free from debt, and at peace with all the world, should use and consume for its current expenses, the national domain; that the common resources, from imposts and tonnage, are abundantly sufficient, when faithfully collected, and prudently and economically applied, for all the legitimate purposes of the common government.

Resolved, That we recommend a separation of the proceeds of the public lands, from the general revenue, and an equal distribution thereof amongst the several states, 'according to their usual and respective proportions, in the general charge and expenditure.'

Resolved, That the senators and representatives of New York, in congress, will conform to the views and wishes, promote the interests of the people of this state, by acting in accordance with the foregoing resolutions."

state, with economy and retrenchment in its prosecution, and by the preservation of institutions intimately connected with that policy and with the various individual interests of our fellow citizens. Nor ought we to forget that the counsels of government are ineffectual to promote the common welfare, if they are not guided by that sense of dependence upon Divine favor, which the remembrance of past blessings is so well calculated to inspire.

WILLIAM H. SEWARD."

Albany, January 7th, 1840.

SPECIAL MESSAGES.

January 18. To the Assembly: Transmitting the annual report of the Adjutant General.

January 24. To the Assembly: Transmitting reports relative to the geological survey. [See note 5.]

January 31. To the Assembly: Transmitting resolutions adopted by the Legislature of New Jersey, declaring that in the absence of federal legislation on the subject, each state had exclusive power "to prescribe the times, places and manner of holding elections for representatives," including the power to determine how the result of the election should be ascertained and certified; that a commission by the Governor under the great seal of the State was a sufficient certificate of election, and that the House of Representatives had no power, as attempted, to exclude five members elected from New Jersey.[18]

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[18] The Legislature adopted in April concurrent resolutions reciting that the House of Representatives in excluding, before they had taken their official oath, and without a trial, five members of New Jersey from participation in the organization and proceedings of that body "were guilty of a violation of the constitutional rights of New Jersey, and of an act of arbitrary power, at war with the principles of our republican institutions, and tending to the subversion of our national freedom," and protesting against the exclusion "as unwarrantable and unjust towards the sovereign state of New Jersey, and dangerous to the liberties of the people of this whole union."

January 31. To the Assembly: Transmitting resolutions adopted by the Legislature of Vermont, favoring the distribution of the proceeds of public lands among the States and protesting against the cession of any such lands to the State in which they were located. [See note 17.]

February 10. To the Assembly: Transmitting a communication from Daniel Brent, American Consul at Paris, France, recommending the enactment of a law to provide for taking proofs and acknowledgments in foreign countries of deeds and conveyances of property situated in the United States.

February 10. To the Assembly: Transmitting resolutions adopted by the Legislature of Missouri protesting against any interference with slavery by non-slaveholding states or by Congress.

February 10. To the Assembly: Transmitting resolutions adopted by the Legislature of Maine, favoring the use of proceeds of public lands by the general government, and their sale to actual settlers, and denying the right of the original thirteen states to any partial distribution of the public lands.

February 12. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *February* 12, 1840.

"I have heretofore received a communication from the Executive of Kentucky, transmitting certain resolutions of the Legislature of that State, requesting information concerning the progress made in this State in the culture of silk, and the manufacture of sugar from the beet root. The resolutions were referred to the American Institute at New York. I have received from that body several communications, to be transmitted to the Executive of Kentucky. The subjects are so important, and the communica-

tions so interesting, that I have thought it might promote the public welfare if copies of the same were submitted to the Legislature.

WILLIAM H. SEWARD."

See Assembly document No. 134.

February 19. To the Assembly: Transmitting resolutions adopted by the Legislature of South Carolina, protesting against the action of the authorities of the state of Maine in refusing to surrender the persons charged with the abduction of Atticus, a negro slave, from the State of Georgia.

February 19. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *February* 19, 1840.

"I transmit a communication from the Hon. Joel R. Poinsett, Secretary at War of the United States, from which it appears that it is deemed essential that a wharf be constructed at Plattsburgh for the public defence. In accordance with the desire expressed by the Secretary, I respectfully recommend the passage of a law authorizing the General Government to extend the wharf at that place, adjoining the public grounds, so far into the lake as the War Department may deem necessary.

WILLIAM H. SEWARD."

March 14. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *March 14th,* 1840.

"A resolution of the Senate has been received, requesting me to communicate to that body the evidence of resistance to the execution of process, upon which the militia were called into service in December last; whether any portion of the militia of Albany county were called out;

and if so, at what time and under what provision of law; whether any reinforcements were despatched to the aid of the force first called into service; and if so, upon what evidence of the necessity of such reinforcement; what was the whole number of the militia engaged in service or ordered to hold themselves in readiness therefor; from what counties called, and at what places did they rendezvous, and how long were they on duty.

In compliance with that resolution, I respectfully inform the Senate, that on the second day of December last the sheriff of the county of Albany left that city with the power of his county, consisting as was then understood, of seven hundred citizens, who had been assembled by him to aid him in the execution of a civil process in several towns in his county, and in overcoming resistance which he apprehended in the performance of his official duty.

The sheriff informed me, at eleven o'clock P. M. of the same day, that he had made an unsuccessful attempt with the aid of the power of his county, to execute process, and required me to call out a sufficient military force to enable him to perform his duty. I directed the sheriff to submit a statement of his proceedings in writing, and advised him to consult with and avail himself of the advice and assistance of the district attorney of his county, and the Attorney General.

On the fourth of December the sheriff submitted to me a statement, which was prepared by the district attorney. In his statement the sheriff represented, that during three months previous he had had process in favor of Stephen Van Rensselaer and others, executors, &c. of Stephen Van Rensselaer, deceased, against different individuals, residents of the towns of Knox, Bern, Rensselaerville and Westerlo, and, as he believed, against persons residents of other towns in the said county, which process included declarations and writs of *fieri facias*, issued out of the supreme court, and returnable on the first Monday of Jan-

uary then next; that his under Sheriff, Amos Adams, about the twenty-eighth of August last, attempted to serve process in suits brought by the same parties, upon persons residing in the towns of Westerlo, Bern and Rensselaerville; that he served a declaration upon a person named Hungerford on the said 28th of August; that Hungerford ordered him to return to Albany, and not pursue his purpose of serving such process; told him he could not go through that part of the county and return alive to Albany; that they, (meaning persons in those towns,) were determined to spill blood; that they had pledged themselves that no officer should travel through that region to serve process for the Patroon, and that they had made up their minds to die in the cause of resisting any officer who should come on the Patroon's business. The under sheriff, nevertheless, proceeded in the performance of his duty, and served several declarations, and remained that night at Rensselaerville. In the night injuries were done to his horse, wagon and harness, all of which had been left in a stable carefully locked.

The sheriff further stated that he had before heard that great excitement prevailed in the said towns of Rensselaerville, Westerlo, Bern, Knox and other places in the county of Albany, among persons holding leases from the late Stephen Van Rensselaer and the tenants of the present Stephen Van Rensselaer, who is commonly known as the Patroon; that the tenants had previously in a body resolved and conspired together to resist the collection of any rent by Van Rensselaer, and the service of all process for the collection thereof, or for enforcing the covenants contained in the leases by which, their lands were held, until said Van Rensselaer should comply with their demands; that about the fifteenth of September he employed Daniel I. Leonard, an active and fearless young man, to serve declarations in favor of the Patroon on Paul H. Vincent, Hugh Scott, Jacob Wright, Isaac Willsey, James

Leggett, Peter Powell, Richard C. Fowler, Andrus Onderdonk, David Smith, Jacob I. Dietz, Johan Jost Shaver, John Shaver and Peter Tarbush; that Leonard served a declaration upon Paul H. Vincent; that Vincent immediately sent a messenger to inform one of the neighbors that "one of the Patroon's men was out serving papers;" that very soon afterwards alarms were sounded in various directions, and Vincent on horseback passed by Leonard, telling him that if he wished to save his life he must return with as little delay as possible to Albany. He served a declaration on Onderdonk; Onderdonk, subsequently, by threats and demonstrations of violence induced him to take back the declaration. He attempted to serve a declaration on Leggett; Leggett refused to receive it and Leonard passed on; Leggett, his son, and another person followed him, threatening to kill him if he should serve any more papers; Leggett called him a scoundrel, traitor, rascal and villain; put his fist frequently up towards his face, and threatened that he would shoot a man who came on such business. Leonard then, after endeavoring to induce Leggett to take the declaration laid it down upon the ground; the other persons then, by threats and demonstrations of violence, obliged him to take the process away, and extorted a promise from him not to serve any more process; he then served a declaration upon Willsey and gave up his purpose of serving other process and proceeded to Bern on his return homeward. Twelve or fifteen persons immediately came to that place on horseback, and soon afterwards fifty persons were assembled; the mail stage having arrived there, Leonard attempted to obtain passage therein to return to Albany; the persons assembled, among whom were Leggett, Willsey, Onderdonk and a son of Willsey's, forcibly prevented his going in the coach; they demanded his papers, returned to him some that he had served, and required him to burn them all as a condition of saving his life; they set a tar barrel on fire, seized him and brought him to the

burning barrel; they then compelled him to throw into the flames the process in his possession, and to proceed with the whole party to Filkin's house where they burned a barrel they had taken with them; thence they proceeded with Leonard to Onderdonk's where he obtained the declaration he had served on that person. They then took Leonard to Lawrence's tavern and burned a tar barrel there; a person named Witbeck led Leonard out, and threatened to put him into the fire; another interfered and prevailed upon them not to hurt him; they then cut off a portion of his hair, called him their prisoner, and with continued demonstrations of anger and violence detained him as a prisoner from nine A. M. to four P. M. when it was announced to him that he was discharged.

The sheriff in his communication farther represented that he had attempted, previously to the said sixteenth of September, to serve said declarations, without success, and that, at different times, he had been threatened with personal violence. The sheriff submitted to me, at the same time, a communication from Hugh Scott, Esq. secretary of a standing committee of citizens of the towns before mentioned, reciting, among other things, that it was understood that the sheriff proposed to visit those towns for the purpose of serving process, and that a great excitement existed there, and referring the sheriff to the treatment the said under-sheriff Adams and one Lansing had received. The communication also stated, that the committee were requested to inform the sheriff that it would be advisable for him to remain at home, unless he should come in the character of a private citizen.

The sheriff further stated, that about the sixteenth of October last, he, with three assistants, set out for the town of Bern to serve process; that after proceeding to Reidsville, about sixteen miles from the city of Albany, they were met by a body of from seventy to one hundred men in the main road, who forcibly prevented their further

progress; alarms were sounded by different persons. As the sheriff and his assistants approached Reidsville, persons assembled from different directions, a tar barrel, with tar therein, was set on fire in the road, and the persons assembled declared that he should go no further on business for Van Rensselaer; they seized his horse; he commanded the people to give way and let him pass and transact business; but they refused to obey, and he was compelled to return to Albany without having served any process, for want of sufficient force to overcome the resistance thus made.

The sheriff in his communication further stated, that on the twenty-seventh of November, he, together with Angus McDuffie, former sheriff, and Amos Adams and Isaac Winne, deputies, again proceeded to execute process; that on arriving at Reidsville, alarms were given in different directions and about three hundred persons soon assembled. His horses were seized and turned towards Albany, and he was told that he should go no farther, and execute no process for Van Rensselaer. A number of the persons assembled had sticks in their hands, and resisted his farther progress, and the sheriff for want of sufficient force to overcome the resistance thus encountered, returned, and was followed about eight miles by a large portion of the Assembly, blowing horns and vociferously crying 'Down with the rent.'

He further represented that being satisfied from the efforts he had thus far made, he should be wholly unable to succeed with any ordinary force or small body of men, he issued notices for six or seven hundred citizens of his county and caused them to be served, thereby commanding the said citizens, to appear at his office in Albany, on the second day of December at ten o'clock A. M. to assist him in serving process and in overcoming such resistance as he had reason to apprehend in the execution thereof, in different towns in the county; that he set out on that day

with from five hundred to seven hundred citizens for the purpose of executing such process; that he had proceeded to Clarksville, twelve miles from the city, and found there about one hundred men on horseback with others on foot; the sheriff being then in advance of his main force with a body of about two hundred men, some of whom were mounted and others were in carriages and on foot. That with about one hundred men mounted he was proceeding to Reidsville to ascertain whether the whole force would be of any service, or sufficient to effect a passage through the body of men he had understood was there assembled. When he arrived at the hill called the Helderberg, about a mile before coming to Reidsville, he was met by from four hundred to five hundred men on horseback, and these were then joined by those he had before met at Clarksville. This force detained the sheriff and his *posse* about half an hour, but finally permitted him to proceed to Reidsville. At Reidsville he met a multitude of from fifteen to eighteen hundred persons, who entirely filled the road and peremptorily and absolutely refused to let him pass farther. The sheriff's communication showed that there were at least fifteen hundred men assembled there against the sheriff and his *posse;* that most of the persons so assembled were armed with clubs and apparently prepared for forcible resistance; that he attempted to pass through this crowd with a part of his *posse* on horseback but was crowded back and pressed in by horsemen; that he commanded the resisters to give way and attempted to pass through the crowd; that a rush was made upon him and a cry arose 'stop them,' and the sheriff with his *posse* were stopped, and forcibly prevented from going farther; that he then became entirely satisfied that any farther attempts would be useless, and that his whole force was entirely inadequate to overcome the resistance thus presented; that from the temper manifested, he did not deem it discreet or advisable to attempt to array his *posse,* chiefly, and almost wholly

unarmed, against the force opposed; that he therefore returned without having been able to execute any process, and that a large body of the resisters followed him and his *posse* on their return, until they reached a point near Clarksville.

And the sheriff in his said communication further stated that from the facts he had thus presented, and from information in his possession, derived from various sources, he was entirely satisfied that the power of his county was insufficient to enable him to execute said process; that at least several thousand were combined in the said county to resist him in any effort he might make to execute process in favor of Stephen Van Rensselaer, and therefore he applied to me, according to the statute in such case made and provided, for such a military force from any other county or counties as should be necessary to enable him to execute the said process.

Although entertaining no doubt that the sheriff's communication was entitled to full credit, yet I deemed it proper to require that it should be verified and corroborated. He therefore made oath to the same, and submitted to me statements fully corroborating the facts therein contained, made by Amos Adams and Daniel I. Leonard, esquires, and also an affidavit by Colonel Peter Relyea, Jr. and by Franklin Townsend, Stephen Paddock, Thomas B. Ridder, and James Meeks, esquires, of the city of Albany. Copies of the sheriff's communication, and the affidavits and papers accompanying the same, are annexed, marked 1, 2, 3, 4, 5 and 6.

Upon receiving this communication, I immediately requested the attendance of the Attorney General, the Secretary of State, the Adjutant General, and several discreet and respectable citizens of Albany. After a consultation with them, and on the fifth day of December, I delivered to the sheriff a written reply to his communication. In this reply I stated to the sheriff that the measure he requested

me to adopt, was the final remedy in cases of organized and persevering resistance to the execution of the laws, and that, although the case presented was marked by circumstances from which it might be inferred that such resistance was resolved upon by many citizens of his county, yet I thought a due regard to the peace of the community, and the public welfare, required that all other efforts should be made to accomplish the service of process, before that final remedy should be employed. I therefore instructed him to enter complaints and obtain warrants, in due form of law, against the resisters referred to in his communication, and to obtain attachments from the supreme court against such resisters, for their contempts; and having obtained such process, to call upon me for further directions. A copy of this communication is hereto annexed marked 7.

In pursuance of the instructions thus given, and with the aid of the Attorney General, the sheriff moved the court for attachments against various persons described as resisters, and sued out warrants before the police justice, of the city of Albany, against persons charged with having made such resistance. On the seventh of December, he informed me that process of attachment had been issued to him by the supreme court against the resisters, and also that he had warrants in the name of the People against various persons who had resisted him as before mentioned.

Thereupon, and on the seventh day of December, I directed the sheriff to summon a *posse comitatus* to assist him in overcoming any resistance he might apprehend in the execution of the said warrants and process, and in securing, arresting and confining the resisters, their aiders and abettors, to be dealt with according to law; and I directed him, for that purpose, to summon the uniformed military corps of the city of Albany, and direct them to appear with their usual arms and equipments. I further directed him to proceed with such armed *posse comitatus,* and if resisted, to seize the resisters, and repel force by

force, being careful to avoid destruction of life, where it should not be indispensably necessary to maintain the supremacy of the laws. A copy of this communication is annexed, marked 8.

Directions were at the same time given to the keeper of the arsenal to furnish the armed *posse* with the arms and ammunition which should be necessary.

The sheriff promptly complied with the directions given him, and on the same day (Saturday) summoned the military companies of Albany, to appear on Monday morning, the ninth of December, at four A. M. at the arsenal, thence to proceed as the armed power of the county.

On the next day, (Sunday) the eighth of December, a letter was written to Maj. Gen. Doughty, of the thirty-first division of infantry, in the city of New York, by the Adjutant General, in pursuance of my directions, requesting that he would have in readiness, to march at two hours notice, six hundred men from the division under his command, and stating that aid-de-camp, Col. J. Amory, who was the bearer of the letter, would give him the necessary explanations; and on the same day, a similar letter was sent to Maj. Gen. Sandford, of the first division of artillery, in the city of New York, requesting him to hold in readiness nine hundred men. A copy of the letter to Maj. Gen. Doughty, and of the note made at the time, of that sent to Maj. Gen. Sandford, marked 9, is herewith submitted.

Brigadier General Averill, of Montgomery county, being then in the city, was informed that if it should become necessary, he would be required to march a portion of his brigade, not exceeding five hundred men.

The Albany military companies cheerfully responded to the call made upon them by the sheriff, and on Monday the ninth of December, at about six A. M., in number about one hundred and twenty men, proceeded as an armed *posse* under the command and direction of the sheriff to enable him to execute process and overcome any resistance that

might be offered him in the performance of his duty. A storm of great severity commenced soon after their departure from the city and continued during the day and the night following. The roads soon became almost impassable, and the country in the region of the apprehended resistance was covered with snow.

During Monday evening reports brought by persons who had gone out to witness the proceedings of the sheriff, stated that a large assemblage of persons, estimated at not less than two thousand, was convened at and in the vicinity of Reidsville, prepared to resist the sheriff and the troops under his command. Deep solicitude was felt for the citizens who attended the sheriff as his armed *posse comitatus*, and many patriotic citizens immediately organized themselves into two volunteer companies and tendered me their services if I should deem them necessary.

At eleven o'clock on Monday night I received by express a written report from the sheriff, and Major Bloodgood and Quarter Master Jesse Buel who attended the sheriff. This report stated that the *posse comitatus* had met no active resistance; that they had proceeded to Reidsville where they met actually assembled in the road from five hundred to six hundred horsemen, and soon about an equal or greater number of men assembled in and about the neighboring houses and sheds; that the *posse* made their way entirely through the crowd, and were satisfied that the people assembled had for the present no intention to resist, but had so arranged matters that no accommodations could be obtained for the *posse* and they were obliged to fall back to Clarksville. The sheriff and his assistants further stated from their observations and from what they had heard, and partly from information and advice of some respectable citizens of the vicinity, that no resistance need be apprehended unless in the case of endeavoring to bring off persons or property, in which case there was no doubt the small force then under command of the sheriff would

be effectually overpowered. They further stated that they required an immediate supply of provisions, tents and blankets. A copy of this communication is herewith submitted marked 10.

On receiving this despatch I convened the several State officers before mentioned without delay, and after consultation with them, and in accordance with their advice, I issued general orders converting the said armed *posse* then under command of the sheriff, and consisting of the members of the military companies of the city of Albany, into a military force and calling the same into actual service, under the direction and command of the sheriff of the county of Albany. The orders were issued by virtue of my authority as Commander-in-Chief of the militia of the State, of the general duty enjoined upon me by the constitution* and laws to see the laws faithfully executed, and of the laws authorizing the sheriff to call forth the force of his county on occasions of resistance; and the measure was deemed necessary as well for the safety and protection of the troops in the danger to which according to the communication received they were exposed, as more effectually to enable the sheriff to execute the process committed to him. A copy of these general orders is annexed, marked 11.

On Tuesday morning a farther communication was received from the sheriff, in which he stated that having assembled a military force pursuant to my directions, and having proceeded to that part of the county where the persons resided against whom he had process, he found a body variously estimated at from one thousand to twelve hundred persons collected together with the avowed purpose of obstructing him in the execution of his duty; that the pretexts upon which the opposition to the laws was founded were such as to have affected in a greater or less degree all the towns in the county out of the city, and he was entirely satisfied that the power of his county was not sufficient to

* Const. 1821, art. 3, § 4.

enable him to execute the process of the supreme court and the criminal warrants which had been delivered to him; and therefore he made application to me for such military force as the occasion demanded. This communication is hereto annexed, marked 12.

Thereupon I held a consultation with the Attorney General, the Secretary of State, the Comptroller, and the Adjutant General, and with their unanimous advice I determined to adopt such measures as should be best calculated to maintain the supremacy of the laws and avoid the evils of civil commotion.

General orders were issued reciting that whereas it appeared that the power of the county of Albany would not be sufficient to enable the sheriff to execute process, and the sheriff having made application for a military force to enable him to perform his duties, the following military corps were ordered into the service of the State from Rensselaer county, viz: the Troy Citizens' Corps, the Troy Independent Artillery Company, and the Troy City Guards. These troops were commanded to move at once to the city of Albany, there to receive orders.

General orders were also issued calling into service five hundred men from the county of Montgomery, being a part of the eleventh brigade of infantry, under command of Brigadier General Averill. General Averill was directed to procure transportation for the troops by railroad, and move forthwith to the city of Albany to receive further orders. Copies of these several orders are herewith transmitted, marked 13 and 14.

A copy of the general orders in relation to the military companies of the city of Albany was transmitted to the sheriff by an aid-de-camp, who was also the bearer of a letter to the sheriff, informing him that measures had been taken to furnish him an additional force, and three companies of uniformed militia from Troy would immediately join him; that this force, in addition to that then under his

command, would enable him to proceed and test the reality of the threats which had been made; that it was a duty which the occasion imperatively required him to perform with decision and energy to serve the process in his hands, by arresting the individuals against whom he had warrants and attachments, and by levying upon, and removing to a safe place the property of those against whom he had executions, and that his determination to perform that duty should be manifested by acts unequivocal in their character; that at the same time his persisting in these efforts must depend on the actual circumstances, and that whenever he should be satisfied, upon consultation with the principal officers under his command, that the persons appearing to resist were in such force and so armed and arrayed that he could not succeed after making an effort, he would take a secure position and wait further directions; that preparations were made to send to his aid a force that would effectually suppress all opposition; and that a proclamation, addressed to the persons who were thus outraging the laws and defying the government, would be immediately sent to him, and he was directed to cause the same to be widely circulated. [See No. 15.]

On the same morning, Tuesday the tenth of December, I issued a proclamation, and with all possible despatch caused it to be extensively circulated among the people assembled for the purpose of resisting the sheriff. A copy of the proclamation is transmitted, marked 16.

On the same day, the tenth of December, I received information from the sheriff, at Clarksville, by a letter from aid-de-camp Col. Spencer S. Benedict, that there was a disposition on the part of the people not to resist the sheriff in his duty; that the fact of the troops remaining there during that day strengthened them in the opinion that an additional force was hourly expected; that the people had collected at Reidsville in large numbers, estimated from twelve hundred to fifteen hundred persons; that they had

two field pieces, and that there were assembled at Clarksville from one hundred to three hundred persons. A copy of this letter is annexed, marked 17.

The troops called in service from Rensselaer county, amounting to about one hundred and sixty men, arrived at Albany at twelve M. on the tenth of December, and were immediately furnished with two field pieces, and ordered to proceed to join the troops at Clark's.

On the tenth of December, at 11 o'clock P. M. I wrote to the sheriff that I had seen no reason to vary the instructions previously sent; that he had probably been already joined by a reinforcement from Troy, and that a larger detachment was ordered from the west, and would join him the next day. I approved of his proceedings so far as they had been communicated, and desired to be informed, if he should at any time deem it necessary to have his force increased. [See No. 18.]

Major Bloodgood wrote at ten o'clock A. M. on Wednesday the eleventh of December, that he was forming the troops under his command to proceed in the performance of their duty; that the force had made such an impression upon the inhabitants in that vicinity that he apprehended no danger with the force under his command, and that the troops would continue with the sheriff and enable the sheriff to execute process as they passed through the country. The Major farther stated that it would be unnecessary to send any more troops. [See No. 19.]

Brigadier General Averill, with about five hundred men arrived at Albany on the evening of the eleventh of December and reported himself for orders. Provision was made for their comfortable lodging during the night. I reviewed them the next day, and having become satisfied that there would be no occasion for their services, I directed that they should be discharged from service on their return to St. Johnsville. [See No. 20.]

On Wednesday, the 11th of December, I received a communication from Azor Taber, Esq. and the Hon. Henry G. Wheaton, citizens of Albany, stating that several citizens of the towns of Bern and Westerlo of distinction and influence among those who had been the cause of the unhappy disturbances existing in the county, arising from resistance offered to the sheriff in the performance of his official duty, being desirous to end these difficulties by availing themselves of the occasion presented by the proclamation which had been issued, had called upon them during the preceding night, and authorized them to assure me that all resistance to the sheriff in the execution not only of civil process, but in the service of criminal process and attachments should be withdrawn, and that the assemblage of people, with a view to such resistance, was prepared quietly to disperse; that from their knowledge of the high standing and character of the individuals alluded to, and their agency in the direction of the movements which had taken place, Messrs. Taber and Wheaton entertained no doubt that the most entire reliance might be placed upon their assurance, and that the pacific offers in the proclamation had been cordially embraced by those to whom they were chiefly directed, who would thenceforth "desist from their opposition, and would conduct and demean themselves as orderly, peaceable, and well-disposed citizens, justly estimating the invaluable rights they enjoyed, and knowing that the only security for the preservation of their rights consisted in the complete ascendancy of the laws." [See No. 21.]

A copy of this communication was immediately transmitted to the sheriff, at Rensselaerville, with a letter in which I stated to him that if it should appear as I confidently trusted, that resistance had ceased, and if the assemblage convened for that purpose should disperse, it would be the sheriff's duty to proceed in the execution of process without the military force, and he was directed,

thereupon, to order the immediate return to this city of all the troops under his command, except a single company; that if he deemed it necessary he would take with him five members of the remaining company, to attend him in the further performance of his duty; that gratified by the evidence which existed that a spirit of obedience to the laws had triumphed over the rash counsels by which a portion of our fellow citizens had been misled, I was desirous to mark my entire confidence in the assurances I had received, by the withdrawal of the troops at the earliest moment when it would be safe to do so. [See No. 22.]

Orders were at the same time issued to Major Bloodgood, informing him, that whenever it was rendered certain that the sheriff could perform his duty without being resisted, the Major was required to return to this city immediately with the troops under his command; and Major Bloodgood was instructed to be especially careful, that no person under his command should offer any insult or injury to the citizens, or commit any breach of the peace; that it would be a most gratifying circumstance, if the supremacy of the laws should be established without the loss of life. Major Bloodgood was farther assured, that his courage and military conduct had been proved, and that I now confidently relied upon his prudence. A copy of this communication is transmitted, marked No. 23.

On Thursday the 12th of December, I received a report from Major Bloodgood, dated at Rensselaerville on the eleventh at half past eleven o'clock P. M. stating, that on arriving with his force at Reidsville on the eleventh, he met as before, a large assemblage of people; that he halted on the hill at that place and formed his force in solid column, and in that way marched in the midst of them, and again halted for the sheriff to do his duty, that the sheriff arrested one person and the military took him into their keeping. Major Bloodgood further stated that he was satisfied the military force had completely overawed the re-

sisters, and that the sheriff would be enabled to effect the service of his process; that when the troops arrived at Reidsville they found the resisters assembled in great numbers, and that with the view of preventing the troops from getting any shelter or accommodations, the resisters occupied all the barns, sheds and public places; that he had ejected the resisters; that his course thereafter would be to continue his headquarters at Reidsville, and send with the sheriff a small armed force to assist him. The Major further stated, that he had never seen regular troops perform better service, or more manfully endure the fatigue, exposure and hardships, which they went through during a tremendous storm on the first day of their march. [See No. 24.]

On the 12th inst. I received from the sheriff a letter, stating that he had served the civil process he had in his hands; had made a levy on property, and had served writs; that he thought he should be able to serve all the process which he had, provided he could find the defendants; and that the troops had behaved well and in the most soldier-like manner. [See No. 25.]

On the 13th Major Bloodgood wrote that the sheriff and the troops had been very active, and that the sheriff had accomplished the service of his process, and the sheriff on the same day certified to me that the service of process had been so far accomplished, that the presence of the troops was no longer necessary, and that every purpose had in view in calling out a military force was effected. [See Nos. 26 and 27.]

The Adjutant General thereupon immediately proceeded towards Rensselaerville with orders that the troops should return to the city. He met the sheriff, Major Bloodgood, and the troops at Clarksville on the fourteenth, Saturday evening, and in pursuance of my directions submitted to the troops my wishes that he would remain there until Monday; but my consent, that if they should deem the delay

too inconvenient they should return to the city on the next day. The troops returned to the city on the next day, Sunday the fifteenth; having marched twelve miles through a deep snow and during a storm of intense severity. I met them on their arrival in the city, and returned them my acknowledgments for their good conduct and patriotism.

On the sixteenth of December, general orders were issued, discharging them from service, and expressing to them in a more formal manner the high sense I entertained of their patriotism and good conduct. A copy of these general orders is transmitted. [No. 28.]

Orders were also issued to the troops which had been directed to hold themselves in readiness in the city of New York, a copy of which is herewith submitted, marked 29.

I have thus submitted all the information in my possession upon the subject of the resolution of the Senate, and copies of all the papers remaining in the Executive Department. The Senate will permit me to recall to its recollection, that in my annual message at the commencement of the session, I submitted an account of the same proceedings. The statement then made in the general view presented of the condition of the State, was necessarily brief. I am happy that the Senate has afforded me an occasion to furnish more full information.

Immediately after the commencement of the session the Adjutant General, by my direction, submitted to the committee of the Assembly, on the militia and public defence, a bill for the payment of the troops who had been called into actual service, and at the same time laid before the committee copies of all the general orders demanded by the resolution of the Senate, and of which, copies are herewith sent, and the same are now remaining, as he informs me, before the Legislature.

I beg leave to submit to the Senate, that the citizen soldiers who performed the service which has been described under circumstances of danger and privation, and

of exposure to the most inclement weather, are manifestly entitled to the most liberal remuneration; that legislative action on the subject cannot be long delayed without shaking the confidence of the militia in the justice of the State; and that, when that confidence shall become impaired, there will be much less alacrity than was manifested by the troops in question in obeying the call of the magistrate to sustain the civil authority.

Nor can I omit on this occasion most respectfully to renew the recommendation made in my annual message, that the Legislature should take into consideration the causes out of which the recent unhappy disturbances arose. Although the citizens of this county who were engaged in those disturbances mistook the remedy for the evils they endured, and adopted measures inconsistent with the peace and good order of society, yet it cannot be denied that their complaints are well-grounded and that legislative interposition in their behalf is required not only upon considerations of justice and equality, but by sound and enlightened policy. Their petitions for relief from tenures oppressive, anti-republican and degrading, are already before the Legislature. I respectfully commend them to the favorable consideration of the Senate. [See note 12.]

WILLIAM H. SEWARD."

March 17. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *March 17th*, 1840.

"I submit the proceedings of a meeting of the citizens of the city of New York, held on the 27th of February last, in relation to a National Bankrupt law.

The founders of the Constitution of the United States seem to have enjoyed prophetic views of the development of the resources and the ultimate destiny of our country. They anticipated that we should become a commercial

nation, and conferred upon Congress ample powers to provide for every vicissitude which must happen to a commercial people. It is to be regretted that Congress has not in all cases exercised these powers in the manner best calculated to sustain the commercial interests and promote in the greatest degree the general welfare of the country. The most striking instance of the neglect of an important constitutional duty by the General Government is found in the omission 'to establish uniform laws of bankruptcy throughout the United States."[f] Until recently, commerce has prospered notwithstanding this neglect; and the misfortunes and embarrassments of individuals which might have been prevented or relieved by the operation of such laws have not been observed to affect the general welfare or arrest the public attention.

A different state of things now exists. A pressure of unexampled severity prevails throughout the length and breadth of the land. A rapid depreciation has taken place in the prices of labor, of mechanical and agricultural productions and of real estate. The foreign and internal trade of the country are alike paralyzed. Domestic exchanges are deranged, the currency of the several States is without approximation to uniformity, individual credit scarcely exists, and the credit of the States themselves suffers under the interested attacks of foreign capitalists, encouraged by the demonstrations of greater distrust in the councils of the General Government.

It is obvious that the first measure of relief from these evils would be the restoration of a sound, equal and uniform currency. Unfortunately the action of Congress furnishes no ground to hope for the adoption of such a measure at the present session. The desire long manifested, and which still lingers in the national councils to reduce to a European standard the value of American labor, will not permit at present the restoration of a currency, through

[f] U. S. Const. art. 1, § 8, clause 4.

the operation of which domestic enterprise has found ample employment, and emigrants have been attracted hither from every country in Europe. Doubtless the people will apply the remedy, when the recurrence of congressional elections shall furnish an occasion for the expression of their will.

In the meantime the citizens of New York, whose proceedings are herewith submitted, indulge the hope that Congress may be moved to grant during the present session, such relief from existing evils as a system of uniform bankrupt laws would afford. It must be confessed, however, that this hope derives its existence rather from the general consent of our fellow citizens concerning the necessity of the measure in the present exigency, than from any indications of favorable action on the subject in the National Legislature.

Nevertheless the wisdom, justice and expediency of a national bankrupt law are unquestionable. There is no moral justice in holding under perpetual and hopeless constraint the debtor, who, having contracted his debts without fraud, voluntarily relinquishes and surrenders to his creditors, when he is overtaken by unforeseen calamities, all the property he has in any manner acquired. Happiness is not so prodigally bestowed upon our race as to warrant any government in depriving a large portion of its citizens, for a single instance, or even for repeated instances of misfortune, of the means to provide effectually for the education and maintenance of their families.

The creditor so seldom derives any advantage from the power he retains over the insolvent debtor, who has honestly surrendered all his property in satisfaction of his debts, and the obstinacy of one creditor so often defeats all effort for compromise, advantageous to all parties, that society is without any equivalent for the privation of the labor and enterprise of that class of citizens.

Credit is necessarily and hazardously increased by expectations on the part of the creditor of ultimate power of coercion or control over the debtor, the exercise of which must be fruitless to the creditor, and productive only of wretchedness to the debtor and his unoffending family.

These principles are now so universally acknowledged, that they are recognized in the codes of all civilized countries, and are especially established in the legislation of every State in the Union. Yet while the commercial operations of our citizens extend throughout the Union, and relations of debtor and creditor are freely assumed without reference to the boundaries of States, the neglect by Congress to establish uniform laws of bankruptcy, very often leaves the debtor without effectual relief, notwithstanding his surrender of all that he possesses for the satisfaction of his creditors. The power of a State to absolve its citizens, under any circumstances, from debts to citizens of other States, is more than questioned at home, and while the Constitution expressly declares, that citizens of one State shall be entitled to all the privileges and immunities of citizenship in other States,[s] the citizen humanely and wisely discharged at home, is debarred from seeking by emigration, the poor man's last hope, to improve his condition under more favorable auspices in any other part of the Republic. Besides all the personal and domestic infelicity thus produced, it is obvious that this evil tends to create and maintain alienation of feelings, sympathies and interests, among the citizens of the several States, who have not only one commerce, but one country, one ancestry, one constitution, and one destiny.

Entertaining these views, I heartily commend the proceedings of the citizens of New York, in relation to a general bankrupt law, to the favorable consideration of the Legislature, in the hope that the subject may be deemed worthy of legislative instruction and advice to the Sena-

[s] U. S. Const. art. 4, § 2, clause 1; 14th Am.

tors and Representatives of this State in the Congress of the United States. And I press the subject more earnestly, both because the peculiar misfortunes of the present time are greatly increasing the number of these unfortunate citizens who require the interposition of the National Legislature, and because there can be little hope of stimulating the action of Congress on the subject at a future time, if the constitutional provision authorizing the establishment of uniform bankrupt laws shall be suffered to remain a dead letter, through such a conjuncture as the present, and until the misfortunes which have now so widely and so deeply excited the public sympathy shall be forgotten in the return of general prosperity.[19]

WILLIAM H. SEWARD."

March 20. To the Senate:

Veto of a bill entitled "An act for the protection of minors."

"I have had under consideration a bill entitled 'An act for the protection of minors,' which originiated in the Senate, and has passed both Houses of the Legislature.

The father is recognized as the natural guardian of his children by the laws of this State, and of all christian countries. The duty of providing for their maintenance and education falls upon him, and he is entitled to the custody of their persons, and to the solaces of their society. But the father may forfeit his right of guardianship by neglect or violation of his conjugal duties, or by conduct which renders him an incompetent or improper person to support or educate his child. In such cases, the mother is entitled to the custody of the child; the supreme court may, on her application, commit the child to her care, and the Chancellor may decree a provision out of the father's property for its support.

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19 The Legislature adopted a concurrent resolution recommending the enactment of a national bankrupt law.

The bill under consideration proposes to deprive alien fathers of their natural right of guardianship in certain specified cases. Those cases are, where the father being an alien and the mother and child American citizens, the father ' shall attempt or threaten to carry the child into a foreign country, without the consent of the mother or her next of kin, if she should not be living,' and ' where the Chancellor shall be satisfied that the welfare of the child would be promoted,' by its being retained in this country. Stated in a more simple form, the effect of the bill is, that if an alien father shall in any case whatever, attempt or threaten to carry his own child to his own country without the consent of its mother he shall thereby forfeit his natural right to determine what is expedient for his child's welfare, and the Chancellor shall be substituted in his place with power over his property, to make such provision as the Chancellor shall deem expedient and suitable for the maintenance and education of the child.

I confess it does not seem to me that the natural wish of an alien parent, who is obliged, or who deems it his duty or interest to return to his native land, to carry his child with him is so immoral that it ought to work a forfeiture of paternal rights. It may at least in some cases, if it be not to be presumed always, that the father obeys laws of nature, stronger and more sacred than all human laws. Natural affection is not peculiar to American parents, nor does it cease to burn in a father's bosom because a sea has intervened between him and his native land. If it would not be unnatural or necessarily immoral for an American sojourning in a foreign country to attempt or threaten to bring home his child, against the wishes of its mother, it cannot be unnatural or immoral for an alien father residing in this country, under similar circumstances, to assert the same right.

The bill manifestly contemplates a case of separation or alienation between the father and mother of the child.

What are the wife's rights under existing laws? If the husband violates or neglects his conjugal or parental duties, she may obtain a separation. If he does not thus forfeit his conjugal or parental rights, she is bound both in law and duty to attend him, wherever his fortune may oblige him to take his residence, and to afford him the solace of her own society, as well as that of his children. It has been supposed to be essential to the public morals, and to the domestic happiness of families, that the separation of husbands and wives, for light and trivial causes, should not be encouraged. It is not necessary to contend against an enlargement of the wife's privileges. It is probable that the superior influence and power of our sex, are manifested as well in the legislative construction of the religious contract of marriage, as in the judicial expositions of it. I doubt not that many a case exists of injury, oppression and domestic tyranny, unredressed and even uncomplained of. I shall certainly be the last to resist any modification of the laws which the Legislature may deem adapted to secure to married women a more faithful discharge of the obligations of the marriage contract, the better preservation of their just rights, and the security of their property. But the bill in question contemplates no such modification of the laws. It applies only to alien husbands, and to cases where the wife being a citizen, refuses to consent that her child be taken by the father out of the country, a refusal which, from the circumstances of the cases, always follows her refusal to accompany her husband personally. Undoubtedly cases occur where an alien husband unreasonably and arbitrarily requires a wife to leave her native country, and expose herself and children to the vicissitudes of fortune in a strange land. But on the other hand, there may be instances in which a wife may unreasonably or capriciously refuse to abide the fortunes of a faithful husband in the country to which he belongs, and where his interests and duty may require him to reside. While it might be just and reasonable that the

wife's wishes should prevail in the former case, it would be manifestly wrong that her perverseness should be encouraged in the other. Unfortunately the bill before me makes no distinction between these cases, and the perverse and delinquent wife may equally with her who is injured or neglected, carry the domestic controversy into the court of chancery. It may be answered that the Chancellor is not authorized by the bill to interpose, except in cases where the welfare of the child will be promoted thereby. This saving clause, however, seems to me insufficient to protect the father in his just and natural rights. It does not clearly appear what is meant by the welfare of the child. Is it welfare in respect to fortune or rank? Certainly neither of these circumstances can weigh against that higher welfare, which is promoted by parental care of the health, and of the moral, intellectual and religious education of the child.

Again, I cannot believe that the Chancellor would be a more competent judge, of what would promote a child's welfare than its virtuous and unoffending parent, even though that parent be a foreigner. Chancellors are not exempt from human infirmities, and it cannot be supposed that they acquire feelings of parental affection and tenderness towards the thousand children of misfortune whom the destitution or depravity of parents cast upon their care. Nature designates the parent as the judge of what will promote the welfare of his child, and endows him with the patience, the assiduity, and the affection necessary for the right discharge of his trust. Human legislation must always fail in efforts to excel Divine institutions.

How can the Chancellor determine whether a removal of the child to the country of its forefathers will promote its welfare, but by evidence of the comparative advantages to be enjoyed in both countries? The alien father knows the advantages of both; the Chancellor cannot know them better, nor decide between them with half the anxious solicitude for the child's welfare.

But it is not necessary to insist upon these objections. There is another which seems to me conclusive against the bill. If the principle of the bill be right in regard to foreigners, it must be equally so in regard to native citizens. Yet, who would not revolt at the idea that the Chancellor should have the power to enter the family circles of our citizens, and, without convicting the parent of neglect or omission of duty, overrule parental authority and separate helpless children from unoffending parents upon the arbitrary pretext of promoting the children's welfare? Would it not be an intolerable evil, if the Chancellor, having thus separated the parent from his child, should at his pleasure exercise his power over the property of the parent, and, in the language of the bill before me, 'make such order in regard to the custody, property and maintenance of such minor, as may be made in cases of incompetency, or disqualification of a father to have the charge of the person, property or education of his minor child.'

It is both right and natural that the Legislature should extend its protection to American women who have intermarried with aliens. But it does not seem necessary to extend to them greater privileges than those enjoyed by their countrywomen, who are wives of our own citizens. Alien husbands and fathers ought to be subjected while residing here, to the control of our laws. But it is inconsistent with the spirit of the age and the genius of our institutions, to have one system of laws for our own citizens, and, like the Chinese, a different and more severe code for foreigners. On the other hand, enlightened policy and national magnanimity alike dictate, that in regard to the laws which govern the domestic relations, there should be equal justice and equal favor shown to our own citizens and the foreigners who sojourn among us. In the marriage contract, if formed in this country, the American wife of an alien submits herself to the existing laws, and her rights are the same as are enjoyed by her country-

women. If the marriage contract is formed in another country, it is unjust and discourteous to the nation to which the husband belongs, to deprive him, because he is an alien, of rights which follow the marriage contract in his country, as well as in our own.

It has not been without much solicitude that I have thus submitted to the Senate my objections to the bill. They are such as arise upon the face of the bill itself. I have looked without success among the legislative documents of both Houses for any report, petition or other paper, which might show a necessity for the passage of the law, or explain the views of the Legislature on the subject.

Entertaining habitually a profound respect and deference for the opinions of the Legislature, and deprecating the exercise of the prohibitory power of the Executive, except upon the most grave occasions, I cannot now exercise that power without assuring the Senate, that, distrusting my opinions where they differ from those of others, I shall not permit myself to doubt the wisdom of the decision of the Legislature, when it shall have reviewed the subject, whatever that decision may be."

The bill was not passed over the veto. As to the status of wives and children of aliens, see the act of Congress of March 2, 1907.

March 21. To the Assembly: Transmitting a communication from Gouverneur Kemble, chairman of the committee on Military Affairs of the House of Representatives, with an accompanying bill then pending in the House, providing for fortifications at the outlet of Lake Champlain, and also at Black Rock on Niagara River, and requesting the enactment of a law ceding to the United States jurisdiction over the land needed for these purposes.[20]

[20] By chapter 155, passed April 21, the commissioners of the land office were authorized to cede to the United States jurisdiction over land at Black Rock which might be required for the purpose of erecting and establishing a fort, battery, barracks, parade ground or military post; and also land at Fort Niagara. The same act also provided for a cession of land near the outlet of Lake Champlain.

March 21. To the Assembly: Transmitting resolutions adopted by the Legislature of Kentucky declaring that public land within the State is not the property of that state, but of its people, and protesting against a cession by Congress of public land to any such state or appropriating its proceeds to any other purpose than for the benefit of all the people; also recommending that the debt of the United States having been fully paid, the net proceeds of public lands should be distributed ratably among the States.

March 31. To the Senate:

Memorandum on approval of a bill relative to elections in New York:

"I have this day approved and signed the bill, entitled 'An act to prevent illegal voting in the city of New York, and to promote the convenience of legal voters.'

In making this communication, I deem it my duty respectfully to inform the Legislature, that a careful examination of the bill induces a belief that there are defects in its details, without the correction of which the laudable purposes of the Legislature may not be accomplished.

It is evidently the intention of the Legislature that the bill shall go into effect immediately, so as to apply to the charter election in the city of New York, which is to take place within fifteen days; and inasmuch as no defects are found in any provisions of the bill which can affect that election, I have approved it. There will be sufficient time to make any amendments which may be found necessary, previous to the adjournment of the Legislature."

This bill became chapter 78, and was amended by chapter 361. [See note 8.]

April 10. To the Assembly: Transmitting resolutions adopted by the Legislature of Maine, relative to the Northeastern boundary of that State, thanking the other states for their assurances of support in the controversy, and

Congress for its prompt action in pledging federal aid in resisting British encroachments, and urging Congress to take immediate measures for the settlement of the boundary dispute.

April 10. To the Assembly: Transmitting resolutions adopted by the Legislature of Indiana, pledging the support of that state in maintaining national rights and honor in the controversy relative to the northeastern boundary of Maine.

April 11 and 13. To the Senate and Assembly respectively:

"EXECUTIVE CHAMBER,
ALBANY, *April 11th*, 1840.

"I transmit a communication from the Governor of Virginia, containing the proceedings of the Legislature of that State, concerning the requisition heretofore made upon me for the delivery of Peter Johnson, Edward Smith and Isaac Gansey, as fugitives from justice.

I observed, in my annual message, that the subject was one which fell within the province of the Executive Department, and that the duties of that department were enjoined by the Constitution and laws of the United States,[h] and not by the Constitution or laws of this State; yet that the respect I entertained for the Executive of Virginia, and the deference I owed to the Legislature of this State, induced me to lay before you the correspondence which had taken place on this subject. The proceedings of the General Assembly of Virginia, manifest a desire to obtain the sense of the Legislature on the subject. I therefore commend the proceedings of the General Assembly, and the communication of the Governor of Virginia, to your respectful consideration, and shall defer my reply, in the hope that I may be aided by the superior wisdom of the legislative department. Altogether willing that the opin-

[h] U. S. Const. art. 4, § 2, clause 2.

ion of the Executive and of the General Assembly of Virginia may be considered under the most favorable auspices, and that my own may be subjected to the most rigid examination, I transmit herewith a report of a committee of the General Assembly of Virginia, in which the subject is ably discussed. [See note 13.]

WILLIAM H. SEWARD."

May 11. To the Assembly: Transmitting a report of the culler-general of staves and heading in the City of Albany.

May 14. The Legislature adjourned without day.

1841. JANUARY 5. LEGISLATURE, SIXTY-FOURTH SESSION.

WILLIAM H. SEWARD, Governor.

ANNUAL MESSAGE.

FELLOW CITIZENS OF THE SENATE AND ASSEMBLY.—The field of public service to which you have been called is bounded by no narrow limits. It includes the responsibilities of securing civil rights; of defining crimes of every grade, and prescribing their appropriate punishments; of establishing laws concerning the acquisition, tenure and alienation of property; of instituting and maintaining courts of justice; of prescribing and enforcing all duties arising out of the domestic and social relations; of creating associations designed to promote the public good, and controlling or suppressing such as are injurious; taking care of the public health; providing a medium of exchange; sustaining domestic trade; regulating elections, and preserving the purity of the elective franchise; enacting laws for the discipline and instruction of the militia, the education of youth, the support of the poor, the relief of the afflicted, the

encouragement of agriculture and all the useful arts, and the development of the resources of the State by the improvement of rivers and the construction of roads and canals; and finally all the responsibilities and powers which sovereign states may assume and exercise, with the exception only of those expressly granted to the federal government, and subject only to the limitations prescribed by the Constitution of this State and that of the United States. These responsibilities affect the welfare, honor and happiness of two and a half millions of free people. Although distinguished for the refinement of its social condition, this community is only in the beginning of its existence. Notwithstanding its thousand towns, it has yet an extensive region altogether unoccupied; and with aggregate wealth of millions of dollars, its soil is imperfectly cultivated, its minerals have hardly been disturbed in their beds, the natural obstacles to trade have been only partially removed, and the perfect subdivision of industry in its various departments is yet to take place. We are in the midst of communities which are neither hostile nor rival powers, nor yet dependent colonies, exhausting our wealth for their support; but free and prosperous States, bound to us not only by the federal compact, but by the stronger ties of common sympathy and affection, and obliged by the natural direction of their trade to contribute to our revenues and increase our commercial importance.

When the federal government has discharged its duty in maintaining peaceful and advantageous relations with foreign countries, in conducting its fiscal affairs so as not to derange the business of the people, in making the necessary improvement of navigable rivers and lakes, and in affording proper facilities for the transmission of intelligence, it can do little more to promote the public welfare. On the other hand, the Legislature which by salutary reform effects a decrease of crime, raises the standard of general education, establishes a new safeguard around the elective franchise,

or opens a new channel for commerce, does more to increase the general prosperity, and even to strengthen the bonds of the Union, than Congress with its limited powers can accomplish.

The year which we are permitted to review, has been crowned with the blessings of health, plenty and peace. No pestilence has been abroad, severing the ties from which happiness arises, and recompensing with disease and death the unavailing offices of affection; nor has war, with its fearful desolation, diverted from domestic sorrows their rightful sympathy and consolation. Contentment has been in our dwellings; and the abundance we have received has rendered it more easy to give than to withhold. The laws have maintained their supremacy; and the administration of justice has encountered no resistance. All the departments of the government have performed their functions without interruption, and with general success. The harvest has been followed by a partial resuscitation of confidence, and the general indications of a revival of enterprise promise a return of prosperity. Sentiments favorable to frugal and patient industry, have regained their just influence; and the agitation, which, for a time, threatened to array against each other, masses having common interests, and to establish new, impracticable and revolutionary measures, in the policy of the government, has given way to a prevailing conviction that the public welfare is best promoted by mutual harmony and confidence, and by a conservative support of tried institutions and laws.

The Comptroller will lay before you a full report of the fiscal condition of the State. The revenue derived from auction sales, within the fiscal year ending on the thirtieth day of September last, amounted to $164,621.38. The receipts for duties on salt manufactured at the salt springs, were $155,961.16.

The revenues from auction sales, have been affected by the depression of commerce, and exhibit a diminution of $60,780.46, since the previous fiscal year. The quantity of

salt manufactured, has been less than in the year 1839, by about two hundred thousand bushels, and the revenues are therefore less by the sum of $33,301.96.

There has heretofore been in use one salt spring in each of the villages of Liverpool, Salina, Syracuse and Geddes. The water at Liverpool contains about seventy per cent of salt; the springs at Salina and Syracuse, furnish about fifty-six per cent each; and the water at Geddes yields about thirty per cent. All the springs, except that at Liverpool, furnish limited supplies. The very commendable efforts of the Superintendent to discover additional sources of brine, have been crowned with success. Three springs have been found at Salina each furnishing water equal in strength and purity to that at Liverpool; and collectively, they will yield an ample supply for the manufactories at Syracuse and Geddes.

I am happy in being able to state that the search for new springs at Montezuma, has been successful; and that a revival of the manufacture of salt at that place may be expected. As a consequence of these discoveries, we may anticipate a reduction of the expense of manufacture, and an increase of the quantity produced; results which cannot fail to be profitable to the treasury, and beneficial to our fellow-citizens.[1]

The amount of tolls and rents of surplus waters collected during the last fiscal year, on all the canals of the State, was..	$1,606,827.45
And the amount of charges on all the canals, exclusive of interest on loans, was.....	$586,011.87
Leaving a net revenue.....	$1,020,815.58

Being $36,981.17 less than the amount of net income of the preceding year.

[1] Chapter 183, passed May 10, authorized the purchase of additional land to be used in connection with the Onondaga salt works, and also provided for repairs and improvements in connection with the manufacture of salt.

The amount of tolls and rents received during the season of navigation in 1840, was $1,775,747.57, showing the gratifying increase of $159,365.55 over the amount received in 1839.

The productive capital of the School Fund, at the close of the fiscal year, was $2,033,807.95. The revenue received within the same period, including the appropriation of $165,000, from the income of what is called the United States Deposit Fund, was $268,400.65. The amount paid out for the support of common schools, was $275,010.10.

The capital of the Literature Fund is $268,777.93. The revenue during the year, including $28,000, appropriated from the income of the United States Deposit Fund, was $46,935.84. The amount paid out and applied to the support of the higher seminaries of learning, was $47,871.97.

All the colleges in the State are in a flourishing condition. The number of students attending these institutions is six hundred and sixty-two; of whom one hundred and twenty are in Columbia College; one hundred and fifteen in the University of the city of New York; two hundred and seventy-three in Union College; ninety-four in Hamilton College and sixty in the college at Geneva.[2] The communication from the president of Columbia College, herewith submitted, shows that that institution is suffering singular inconvenience from the past liberality of the State.

The number of students in all the academies and grammar schools in the State, is thirty-four thousand eight hundred and three. The number of children attending the common schools is about five hundred and seventy thousand; and the whole number of children between five and sixteen years of age, as nearly as can be ascertained, is about six hundred thousand. There are about eleven thousand common school districts in the State, including those

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2 Chapter 223, appropriated $5,000 annually to Geneva College for three years, to be used for the establishment and equipment of a medical institution.

under the charge of the Public School Society in the city of New York, in all of which schools are maintained during an average period of eight months in the year. Of these school districts, there are very few which have not complied with the act providing for the establishment of School District Libraries, and there are at this time in these various district libraries about one million of volumes. Within the five years limited by the law, there will have been expended in the purchase of books, more than half a million of dollars. Although an injudicious choice of books is sometimes made, these libraries generally include history, and biography, voyages and travels, works on natural history, and the physical sciences, treatises upon agriculture, commerce, manufactures and the arts, and judicious selections from modern literature. Henceforth no citizen, who shall have improved the advantages offered by our common schools and the district libraries, will be without some scientific knowledge of the earth, its physical condition and its phenomena, the animals that inhabit it, the vegetables that clothe it with verdure, and the minerals under its surface, the physiology and the intellectual powers of man, the laws of mechanics and their practical uses, those of chemistry and their application to the arts, the principles of moral and political economy, the history of nations, and especially that of our own country, the progress and triumph of the democratic principle in the governments on this continent, and the prospects of its ascendancy throughout the world, the trials and faith, valor and constancy of our ancestors, with all the inspiring examples of benevolence, virtue and patriotism exhibited in the lives of the benefactors of mankind. The fruits of this enlightened and beneficent enterprise are chiefly to be gathered by our successors. But the present generation will not be altogether unrewarded. Although many of our citizens may pass the district library heedless of the treasures it contains, the unpretending

volumes will find their way to the fireside, diffusing knowledge, increasing domestic happiness, and promoting public virtue.

The institution for the instruction of deaf mutes and the asylum for the blind continue to make ample returns for the patronage they have received.[3]

The Legislature of 1839 very properly directed the immediate attention of the commissioners of the asylum for the insane to the completion of one of the four edifices contemplated by my predecessor. That building is designed to accommodate about two hundred and fifty persons, and may be prepared during the ensuing season for the reception of those who unhappily are to become its tenants. It devolves upon you to adopt a system for the government of the institution. There is not within the range of the healing art, a department that requires so rare a combination of profound knowledge of the physical and intellectual constitution of man, with firmness, gentleness and devotedness, as that of the cure of ruined minds.[4]

The geological examination of the State will be completed on the first day of June next. The public offices of the several State Departments will be transferred during the spring to the new State Hall; and the building now occu-

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[3] The charter of the New York Institution for the Instruction of the Deaf and Dumb was renewed for five years by chapter 163, passed May 1.

Chapter 175, passed May 7, appropriated $5,000 to the New York Institution for the Blind for general repairs and improvements, and $5,000 for the erection of a wing to the main building. The necessary stone for the new work was to be furnished by the Agent of the State Prison at Mount Pleasant.

[4] Chapter 109, passed April 17, appropriated $75,000 for purposes of construction, and also for furnishing the State Lunatic Asylum. By chapter 278, passed May 26, the Governor and Senate were authorized to appoint a board of trustees of the asylum to be composed of five members, to hold office for three years. The board was required to examine other similar institutions and report to the next legislature "a system for the government, discipline and management of the State Lunatic Asylum, and regulations for the admission of patients so as to secure its benefits equally to all the counties of this State." See special message of May 3.

pied by those offices will, in pursuance of the law passed at the last session of the Legislature, be fitted for the reception of the geological, botanical, mineral and zoological specimens procured during the survey. The final report of the Geologists will be submitted at the next session of the Legislature. Exhibiting a full view of the zoology, botany, mineralogy and geology of the State of New York, it will be a nobler tribute to science than any which has yet been offered in our country.[5]

The law passed last year concerning the redemption of bank notes has had a beneficial operation. The currency issued by the several banking institutions and associations has maintained its credit and circulation. The bills of the City Bank of Buffalo have been redeemed by applying for that purpose $262,333.83 of the Safety Fund and $52,795.17 received from the contributing banks. The Wayne County Bank at Palmyra has recently been placed under an injunction at the instance of the Bank Commissioners; but the holders of its bills will sustain no loss. There remains of the capital of the Safety Fund the sum of $556,486.76.[6]

The number of convicts in the State Prison at Auburn on the thirtieth day of September last was six hundred and sixty-seven; of whom two hundred and fifteen were received during the year ending with that day. In the same period twelve died, thirty-five were discharged by pardon, and one hundred and fifty-four by expiration of their sentences. The amount received for the labor of the convicts during the fiscal year was $61,355.35; and the amount expended for general support and necessary improvements, and in the payment of previous debts was $57,928.10. The excess of the earnings of the convicts over the ordinary expenses of the prison was $6,917.39. The number of con-

[5] A concurrent resolution provided for the distribution of the geological survey when completed to state officers, to members of the Legislature, and other public officers and educational institutions.

[6] Several acts relating to financial institutions were passed at this session, but they related chiefly to procedure or other matters of administration.

victs in the State Prison at Mount Pleasant at the close of the fiscal year was eight hundred and thirty-two. The number received during the year was three hundred and fifty-six; sixteen died, twenty were discharged by pardon, and one hundred and ninety-two by expiration of sentence, within the same period. The amount of earnings was $83,504.14, and the expenses of the prison were $77,460. The fiscal condition of the prisons is highly satisfactory, and their discipline has been improved. The complaints of cruelty which heretofore engaged public sympathy, and brought our penitentiary system into disrepute, have altogether ceased. Sunday schools have been maintained; and in pursuance of my recommendation, the cell of each prisoner is always supplied with a volume of the School District Library. This measure was followed by gratifying improvement in the conduct of the prisoners. Many wearisome hours of solitary confinement are beguiled, resolutions of repentance and reformation are formed, and the minds of the unhappy convicts, accustomed to the contemplation of virtue and expanded by knowledge, are gradually prepared to resist the temptations which await them on their return to society.[7]

The efficacy of the administration of justice must necessarily be impaired by a too frequent exercise of the pardoning power. Inconsiderate clemency operates as an encouragement to crime, and produces more misery than it alleviates. I have deemed it my duty to restrict the exercise of the pardoning power, within narrower limits than have been heretofore observed. It has been confined to those cases where the conviction was erroneous; where the punishment adjudged was manifestly too severe; where important disclosures conducive to public justice were made; where the insanity of the prisoner showed that a higher

[7] Chapter 200, passed May 20, provided for the erection of 24 additional cells in the female prison at Mount Pleasant, and required all female convicts in any part of the State to be sent to this prison.

than any human power, had interposed between society and the offender against its laws; where diseases threatening life might be removed by a restoration to liberty; and a small number in which the appeal for mercy, was commended by the sex, the tender youth or extreme age of the prisoner, or by the temptations which prompted, or the mitigating circumstances which attended the commission of crime, and was supported by evidences of penitence and reformation. The whole number of persons discharged from the State Prisons by pardon, during the last year, was fifty-four. The number pardoned in 1839, was thirty-three. Of those pardoned in the two years, the rights of citizenship were restored to those only, six in number, who were found to have been unjustly convicted.

The whole number of persons pardoned for every description of offence, including misdemeanors, in 1820, was three hundred and fifty-four; in 1821, three hundred and eleven; in 1822, two hundred and nine; in 1823, one hundred; in 1824, one hundred and eighty; in 1825, one hundred and seventy-three; in 1826, two hundred and eighty-five; in 1827, one hundred and ninety; in 1828, two hundred and thirty-one; in 1829, eighty-eight; in 1830, one hundred and thirty-eight; in 1831, one hundred and fifteen; in 1832, one hundred and seven; in 1833, one hundred and sixty; in 1834, one hundred and forty-nine; in 1835, one hundred and thirty-one; in 1836, ninety-three; in 1837, one hundred and eight; in 1838, one hundred and fifty-eight; in 1839, sixty-four; and in 1840, eighty-five.

Sixteen convictions for murder have been reported to me within the last two years. Of these, one conviction reversed by the Court for the Correction of Errors; one convict was pardoned because, although he pleaded guilty to the charge, it was certified by the court that he was insane when the crime was committed; the sentences of three were commuted to confinement in the State Prison for life, upon the ground of doubts of the justice of their conviction, or

from mitigating circumstances; nine have suffered the penalty prescribed by law; and two are now awaiting the same fearful punishment. While many citizens deny the absolute right of government to inflict capital punishment, all agree that its too great frequency operates as an encouragement, rather than a preventive of crime. It is an interesting and important inquiry whether that frequency does not now exist among us.[8]

The commissioners appointed to mediate a settlement of the difficulties on the manor of Rensselaerwyck, have prosecuted the duty assigned them, in a spirit of equal justice to all parties, and will, as I am informed, soon be prepared to submit a report.[9]

The canals were navigable from the twentieth of April until the fourth of December; and the navigation has been less hindered than in any previous year. An increased depth of water has been maintained permitting an increase of burthen in the boats used, and materially reducing the

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[8] An Assembly Committee which had under consideration the part of the Governor's Message relating to capital punishment, presented on the 14th of April, a long report, concluding by expressing the opinion that capital punishment should be abolished. The committee proposed a bill to effectuate this purpose, which provided that a person convicted of a crime previously punishable with death should be punished by imprisonment in "solitude and at labor," and should be deemed civilly dead.

The committee also proposed the following constitutional amendment relating to the Governor's pardoning power:

"The Governor shall have power to grant pardon after conviction for all offences except cases of impeachment, and except for the crimes of treason, murder, or arson in the first degree. In the said cases of treason, murder, and arson in the first degree, he shall have power, at any time after conviction, to order a new trial, in the same court in which the conviction was had, on the discovery of any new and material evidence in favor of the accused. Nor shall any law be passed in any of the said cases, to pardon or mitigate the sentence of any prisoner convicted of the same, within twenty years from the date of such conviction; nor after the expiration of the said period, without the concurrence of two-thirds of all the members elected to each branch of the Legislature at three successive annual sessions of the same."

[9] The report on the Rensselaerwyck titles was submitted on the 23d of April. See Assembly Document No. 261.

expense of transportation. Thirty thousand dollars were expended in repairing the dam across the Hudson River at Troy, which was carried away by a flood in February last. It was also found necessary to substitute new structures for several decayed locks and aqueducts, in order to maintain the navigation of the Erie and Champlain canals. The expenditures for repairs have therefore been somewhat increased.

The enlargement of the Erie canal has been prosecuted with all the diligence permitted by the appropriations for that object. Various portions of the work have been finished, and others will be completed within the winter. The amount expended for the enlargement, prior to the 1st of January, 1840, was $4,669,661. The appropriations for that object during the last year were $2,500,000; and the surplus revenues of the canals applied to the same purpose were $369,171. Thus, between the first day of January, 1840, and the first day of March next, the sum of $2,869,171 will have been expended, making the aggregate sum which will then have been applied to this great work, $7,538,832. The experience of the present Commissioners justifies the belief that the cost of the enlargement will not exceed the corrected estimate submitted by their predecessors in 1839, viz. $23,112,766. Deducting the amount which will have been expended on the first of March next, $7,538,832, there will be required to finish the enlargement the sum of $15,573,934. That portion lying between Albany and Rome, might be completed in the spring of 1843; the part extending from Rome to Rochester might be finished by the spring of 1845; and the residue, from Rochester to Buffalo, by the spring of 1847.

The Legislature, at its last session, appropriated $100,000 for rebuilding the locks on the Chemung canal. The work has been commenced, and will be efficiently prosecuted. Fourteen of the new locks will be ready for use when the navigation is resumed.

A section of the feeder of this canal, one mile in length, was left in an unfinished state, and the navigation has been much hindered. The inconvenience has been felt more severely since the business of the canal has been increased by the transportation of coal.

The construction of the Black River canal has been continued. The portion of it from the Black River to Rome, about thirty miles in length, required as a feeder, may and ought to be completed as soon as an additional supply of water shall be required for the enlarged Erie canal. According to the corrected estimate of the former Canal Commissioners, the cost of the Black River canal and feeder will be $2,431,699.29. There was appropriated in 1836 the sum of $800,000, and in 1840 the sum of $250,000 was appropriated, to which is to be added the expense of a feeder from the Black River to the Erie canal, estimated by the Canal Board at $290,097.66, which has been transferred to the credit of this canal, making an aggregate of $1,340,097.66; all of which, except about $160,000, had, at the close of the fiscal year, been devoted to the construction of this canal.

That part of the Genesee Valley canal, lying between Rochester and Mount Morris, thirty-six miles in length, was opened for navigation on the first of September last. The branch canal to Dansville will be finished and connected with the main canal during the present winter. The cost of the entire improvement was estimated by the former Canal Commissioners at $4,900,122.79. The sum of $2,000,000 was appropriated in 1836, and $500,000 in 1840, the whole of which will have been expended by the first of March next.[10]

[10] Chapter 194, passed May 18, authorized a loan of $2,150,000 for continuing work on the Erie Canal, $550,000 for the Genesee Valley Canal, and $300,000 for Black River Canal. Chapter 219, passed May 25, authorized the extension of the Chemung Canal to the navigable waters of Seneca Lake, and also provided for completing the locks as specified in the act of 1840, and appropriated $200,000 for these purposes.

Forty-five miles of the New York and Erie railroad, extending from its eastern termination at Piermont on the Hudson River to Goshen, in the county of Orange, will be in operation within the present month. The entire length of the road will be four hundred and forty-six miles. Various portions, seventy-two miles in the whole, are graded, and ready to receive the superstructure. Ninety-one miles, chiefly in the valley of the Susquehannah, are under contract, and the company represents that it is about closing contracts for one hundred and eighty-eight miles. It represents further, that its road will, in its capacity for business, and the cheapness and safety with which it can be used, be second to none in the United States and with the exception of its higher grades, equal to any in England. The company also communicates its expectation of completing the work within the period of two years. The cost of the road as estimated by the company, will be about nine millions of dollars. The amount which has been expended is one million three hundred and fifty thousand dollars. The credit of the State was granted by the law of 1838, to the extent of three millions of dollars, of which four hundred thousand dollars were issued prior to 1840, and four hundred thousand dollars within that year.

The construction of the Auburn and Rochester railroad has been successfully prosecuted. That portion of the road which extends from Canandaigua to Rochester, and connects with the railroad from the latter place to Batavia, was put into operation on the first of September last. It is expected that the whole will be finished within the ensuing eighteen months, and there will then be a continuous line of railroads from Albany to Batavia, leaving a space of only forty miles without such communication, between the Hudson River and Lake Erie.

The commissioners appointed to survey the routes for a railroad from Ogdensburgh to Lake Champlain, have performed that duty. I lay before you their report concerning

the feasibility and advantages of an improvement which I deem essential to the development of the mineral resources of the State, and to its general prosperity.

The Delaware and Hudson Canal Company, and all the railroad companies which have been aided by loans of the credit of the State, have regularly paid the interest on the stock issued for their benefit.

The debt of the State, exclusive of that portion which was contracted for the construction of the Erie and Champlain canals and which is regarded as paid by the accumulation of funds set apart for that purpose, and exclusive also of the contingent liabilities arising from the loans of its credit, is as follows:

Debt of the General Fund, exclusive of what is called the permanent loan to the Treasury from the canal revenues.....	$1,412,961.62
Debts for the lateral canals that are completed, including the recent loan for the Chemung canal	3,551,784.71
Debts contracted for unfinished works, viz.	
For the enlargement of the Erie Canal...	6,500,000.00
For the Black River Canal.....	1,050,000.00
For the Genesee Valley Canal.....	2,500,000.00
For the Oneida River improvement.....	50,000.00
Aggregate State debt.....	$15,064,746.33

The net revenues of all the canals during the fiscal year, after deducting all expenditures and the deficiencies of the lateral canals were.....	$1,020,815.57
Leaving a clear surplus after paying the interest on the debt for the enlargement of the Erie canal, and the $400,000 annually loaned to the Treasury, of.....	398,095.95

The Commissioners of the Canal Fund estimate that the clear surplus of the current fiscal year will be	$570,000.00
The expenditures from the General Fund, during the fiscal year, exclusive of the deficiencies of the lateral canals were	779,324.36
The receipts from the sources provided by law were	379,211.01
From the payment of the balance due the preceding year from the Canal Fund and from other sources	400,113.35

The militia of the State consists of forty-three divisions, of which four are artillery, three are cavalry and horse artillery, thirty-three are infantry, and three are riflemen. These are divided into three hundred and sixty-nine regiments and separate battalions. The aggregate number of citizens enrolled is one hundred and eighty-three thousand one hundred, of whom seven thousand three hundred and thirty-six are cavalry and horse artillery, nine thousand and eighty-two are artillery, one hundred and fifty-seven thousand six hundred and thirty-one are infantry, five thousand six hundred and sixty-nine are riflemen, and three thousand three hundred and eighty-two are enrolled in independent uniform companies. While I have the pleasure to announce a gratifying improvement in the enrolment of the militia, it will excite no surprise that its discipline remains as imperfect as heretofore.

The report of the Commissary-General presents an account of the condition of his department. The State owns two hundred and ninety-two iron, and two hundred and fifty-five brass pieces of ordnance, with arms and imperfect equipments for a force of about fifty thousand men. Your attention is respectfully called to the suggestions of the Commissary-General concerning the necessary measures for the preservation of the important property committed to his care.

I submit herewith the correspondence which has passed between the Executive of Virginia and myself, on the subject of the demand made by the former for the delivery of certain fugitives from justice, charged with stealing a negro slave. In bringing the subject of this correspondence before your predecessors, I observed that it fell within the province of the Executive Department, and that the duties of that department arose under the Constitution and laws of the United States, and not under the Constitution or laws of this State.[a] Nevertheless the respect I owed to the Executive of Virginia, and to the Legislature of this State, induced me to submit my action for the information of the Legislature. The Governor of Virginia, by direction of the Legislature of that State, subsequently transmitted to me certain resolutions of that body, with a request that I would lay the same before the Legislature of this State. I was at the same time requested by the Executive of Virginia to review the position which I had taken. Both these wishes were complied with, and with what results will appear in the correspondence now submitted. I have thought it might not be uninteresting to the Legislature to receive also a copy of a special message by the Governor of Virginia to the Legislature of that State, together with a copy of a circular letter addressed by that functionary to the Governors of the slave holding States.[11]

In discharging the constitutional duty of recommending such measures as are deemed expedient, I shall have occasion sometimes to refer to views submitted to your predecessors, and to past legislation.

It has been recommended that the Legislature should insist upon the payment by the Federal Government of the fourth installment of the surplus revenues, and require a relinquishment by Congress of all claims for a reimburse-

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[a] U. S. Const. art. 4, § 2, clause 2.

[11] See Senate Documents, Nos. 1 and 2 and Assembly Document Nos. 2 and 3, for papers relating to the Virginia extradition case.

ment of the moneys constituting the United States Deposit Fund. The moneys deposited with the States were derived from imposts and from sales of the public lands, and were the property of the people of the United States. It cannot be denied, that when the distribution was made, it was well understood by Congress, that the form of a deposit was adopted, only to save the bill from the veto of the Federal Executive. Nor is it less apparent that the several Legislatures, in disposing of the funds deposited, by no means contemplated a contingency in which they should be repaid to the General Government. In the last message of the President, and in the report of the Secretary of the Treasury, this deposit is alluded to as a part of the resources of the Treasury, which has lain uncalled for during a long period of fiscal embarrassment, although Congress, subsequently to the distribution, expressly prohibited the Secretary from demanding the moneys without its express authority. Having observed with much pleasure, the introduction into the House of Representatives of a bill which would carry into effect the views I have heretofore presented to the Legislature, I again respectfully submit the inquiry, whether the people of New York expect to withdraw from the endowment and support of common schools, and other seminaries of learning, the sum of four millions of dollars thus derived, and pay it into a treasury which, when well managed, overflows with the tributes of their own commerce.

After the canal tolls, our chief sources of revenue are the duties upon auction sales, and upon the manufacture of salt at the salt springs. Previous to 1838, such sales were required to be made by persons appointed by the Governor and Senate. It was justly urged against that system, that it was a monopoly injurious to trade, and that it unnecessarily increased the patronage of the Executive, and it was therefore abolished. It has been thought worthy

of inquiry, whether the plan now pursued is not defective in provisions for securing the payment of the duties constituting the revenue.

The salt springs furnish a supply of water ample for the production of half a million of bushels of salt annually, but the demand within the regions dependent upon them scarcely exceeds half that quantity. It has been believed that by a judicious reduction of canal tolls upon the salt manufactured from the water of those springs, the market might be extended, the manufacture increased, and consequently the revenue of the State augmented. To these suggestions, I respectfully add that of a negotiation upon some equal basis with the State of Ohio, for a reduction of tolls upon our salt transported upon the canals of that State, which might be reciprocated by a reduction of our tolls upon coal and other minerals from Ohio.

It was submitted to your predecessors that the administration of justice was hindered and delayed, and rendered oppressive by reason of the defective organization of the courts of law and equity; that the court of chancery was incompetent to its important duties; that causes remained on its calendar more than two years; that its patronage and power were too great to be reposed in a single judge; that the supreme court was oppressed with business, and could not perform it with the deliberation and despatch required by the public welfare; that courts of common pleas had in a great degree been deserted by suitors, and had the form and organization of courts of justice, while they enjoyed little of the popular respect due to such tribunals, and performed few of their important functions; and that the compensation heretofore paid to registers and clerks in chancery, and to the clerks of the supreme court, to county clerks, surrogates, notaries and supreme court commissioners for their services, to attorneys in the collection of debts, and to solicitors, counsellors and masters, in the foreclosure of mortgages, was disproportioned to

the services actually rendered and was unnecessarily increased by the prolixity and tediousness of legal forms and proceedings. It was proposed to reorganize the court of chancery and the supreme court, to restore the efficiency and usefulness of the courts of common pleas, to enlarge the jurisdiction of the justices' courts, to introduce greater simplicity and brevity into legal proceedings and to reduce the fees of the various public officers to such a scale as would afford just compensation for necessary services. Although the necessity of reorganizing the higher courts was earnestly insisted upon by my predecessor as well as by myself, has engaged the attention of the Legislature for several years, and has been made the subject of reference to the judiciary and to a special commission, yet such have been the difficulties attending any improvement, that it has been left for your consideration. The only measures which have been adopted were temporary laws directing the appointment of two vice-chancellors in the first circuit, one in the eighth, and an additional judge of the court of common pleas in the city of New York. The Legislature of 1839 reduced the fees and emoluments of registers and clerks in the court of chancery by a law which diminished the aggregate compensation annually paid to those officers by about the sum of thirty thousand dollars.[12]

The Legislature of 1840 entitled itself to the lasting gratitude of the people, by benign measures designed to produce a reform in legal proceedings. It dissolved the connection between judges of county courts and boards of supervisors, in the appointment of county treasurers and county superintendents of the poor, a connection by which

[12] A concurrent resolution was adopted recommending a constitutional amendment embracing a new judiciary article. In addition to existing courts, the article proposed a court of chancery to be composed of the chancellor and not less than two nor more than four assistant chancellors. The article permitted the creation of not more than two other courts of law with jurisdiction co-ordinate with the Supreme Court. The office of circuit judge was to be discontinued.

judges were made partisans, and the power of the Executive Department was exercised to defeat the will of the people in the selection of those local functionaries. The office of commissioner of deeds was abolished, except in cities; its duties were devolved upon justices of the peace, while the fees allowed for those duties were diminished; and thus an office was dispensed with, in which there were about three thousand incumbents, and the burthens of the people were sensibly diminished.[13] A law was also passed requiring all judgments designed to affect any real estate, to be docketed in the county in which such real estate is situated. This measure has relieved the alienation of land of onerous charges, and much inconvenience, and has removed one of the causes which diverted business from the courts of common pleas into the supreme court. The jurisdiction of justices' courts was extended, so as to include controversies where the amount involved does not exceed one hundred dollars. It is gratifying to notice the progress of these domestic tribunals in the favor and confidence of the people. Their jurisdiction was originally limited to demands not exceeding five pounds, or twelve dollars and a half. By other laws, the Legislature reduced the fees of many other officers, and diminished the average cost of foreclosure of mortgages to a sum two-thirds less than under the former system, that of collecting debts in actions not litigated to a sum three-fourths less and the costs in litigated suits to an amount one-third less. While there can be no doubt that these measures were in principle just, and that the reform which has been accomplished was necessary, it is complained by many who are conversant with the practice of the courts, that some of the laws which have been passed are imperfect, liable to be evaded, and in some respects unequal in their operation. Such a result is by no means improbable. There are few of the works of man which are not susceptible of improve-

[13] See *ante*, p. 770, note 6, for legal reforms mentioned by the Governor.

ment; and certainly all experience has shown, that laws seldom form an exception. If the system which has been substituted in the place of one that had long prevailed, is, in any material respect defective, or unjust, I doubt not that it will afford you much pleasure to make the necessary amendments.

The charitable institutions under the patronage of the State, have heretofore been commended by me to the Legislature, and I am happy to acknowledge that no appeal made in their behalf has been denied. It was suggested in 1839, that the interests of the State required the visitation of the Institution for the Instruction of the Deaf and Dumb. The Superintendent of Common Schools has very properly been charged with that duty.

In regard to our penitentiaries, it has been maintained that discipline ought to be tempered with kindness, and that moral influences should be employed to secure the submission and promote the reformation of convicts. Although some improvement has been made in this respect, more may yet be accomplished. It is too often forgotten, that the object chiefly contemplated in the adoption of our penitentiary system, was the reformation of offenders. This object derives its importance from considerations of prudence, as well as of philanthropy. The unreformed convict, after being released, spends a brief period in committing depredations upon society, and in corrupting youth, and then returns to the prison to exercise a vicious influence upon his fellow prisoners. Reformation can seldom be expected, without addressing the mind. I would have the school room in the prison fitted as carefully as the solitary cell and the workshop; and although attendance there cannot be so frequent, I would have it quite as regular. The recent establishment of a separate institution for female prisoners, under the management of one of their own sex, reflects much honor upon the State; and I am happy to add that it has realized the expectations of the Legislature.

Females convicted within the district from which criminals are received at the Auburn prison, are now sent to that penitentiary, where they remain until an executive order is made for conveying them to Mount Pleasant, and such an order cannot be made for less than ten convicts. This temporary imprisonment of females in the prison at Auburn operates harshly towards them, and is inconvenient in regard to the management of that institution. I respectfully recommend that the law be modified, so that females be directly conveyed to their proper penitentiary. [See note 7.] The chief obstacle to a reformation of this class of offenders is the inflexibility with which society rejects them after their season of penance is past. While the cause of public morals requires their exclusion, at least until they have given satisfactory evidence of reformation, humanity and expediency unite in recommending proper efforts to sustain those who are truly reformed. It has been suggested that a retreat might be provided for them at Mount Pleasant, where, under the care of benevolent females, they might maintain themselves by labor, until by good conduct they should become entitled to employment elsewhere. Such a plan must necessarily be left to private liberality; and I am informed that such liberality is awakened to the undertaking, and ready to engage in it, if a proper edifice can be obtained. There is a building which belongs to the State, situated near the prison, and now of very little use, which might be devoted to this humane purpose, at least until the experiment can be tested. The whole number of male convicts in the State Prisons is fourteen hundred and twenty-three, of whom eleven hundred and fifty-three are white, and two hundred and seventy are colored persons. The number of female convicts is seventy-four, of whom forty are white and thirty-four are colored. The sex has a just claim to extraordinary effort for the reformation of the small number of persons it furnishes to our prisons.

The success which has crowned the benevolent efforts of the founders of the House of Refuge has induced an opinion that it would be profitable to establish a similar institution in the western part of the State, where the subjects of its discipline could be maintained at much less expense than in the city of New York.

The law which authorized the imprisonment of non-resident debtors, against whom no fraud was alleged, was repealed at the last session upon the ground that the practice operated injuriously to trade, and was inconsistent with the benign spirit of our code. There remains now only one relic of that usage in this state. Imprisonment for debt is allowed in actions brought in the federal courts; and by the laws of this State, our jails, designed only for the custody of criminals, are permitted to be used as prisons for the confinement of debtors, under process issued by the authority of the United States. If you shall be of opinion that no principle of the Federal Union requires us to extend our courtesy so far, we shall no longer witness the imprisonment of honest but unfortunate debtors, with the sanction of this State.

The Legislature at its last session communicated to our representatives the opinion that Congress was imperatively required to exercise its constitutional power of passing uniform laws on the subject of bankruptcy.[b] I beg leave to refer you to the views of that interesting subject which were submitted to your predecessors, and to suggest a renewal of instructions during the present session of Congress.

Our currency was sustained in 1839 and 1840, during a period of suspension in most other States. For this advantage we are indebted to a supervision of the banks, to the establishment of a free banking system, to the repeal of the act prohibiting the circulation of small bills, and to the law of the last Legislature regulating the redemption of

[b] U. S. Const. art. 1, § 8, clause 4.

bank notes. The policy found most conducive to the public welfare, has been to desist equally from increasing the number of chartered banks, and from legislation hostile to those in existence; to correct defects in the new system of free banking, and to give it a fair trial; to require of all banking institutions and associations, not only a prompt redemption of their circulating notes, but also that such notes shall be at all times kept in good credit throughout the State. These views having prevailed in the Legislature during the last two years, the public inconveniences which heretofore existed, have ceased; and it has happened for the first time within thirty years, that the Legislature is relieved alike from applications for banking privileges, and from complaints against those by whom such privileges are held.

While the most careless observer can scarcely fail to perceive that political power in this country, resides chiefly with that portion of the people which is engaged in agriculture, he who studies the operation of our system will find in the influence of the agricultural classes a guaranty of peace, of good order and of the stability of our institutions. It might therefore be expected, that the policy of our government would be such as to favor the first and most important department of national industry. But no such favor has been extended, at least to the agriculture which employs free labor. Our workshops are chiefly in Europe; and yet the productions of the grain growing states, are virtually excluded from European markets by the operation of corn laws. Nor is this all. We import productions similar to those of our own soil; hemp from Russia, wine and silks from France, wool from Spain, and linen from Great Britain. The attention of the Legislature has been called to the subject of agriculture, less from a hope that direct relief could be afforded, than under a belief that our fellow-citizens engaged in its pursuits, might be assisted in gaining the attention of the Federal Government. Two plans for promoting agricultural improvement

have engaged public attention. One contemplates the foundation of agricultural societies, upon the model of that established in Berkshire county in Massachusetts. Associations of this kind have been heretofore formed in this and many other states, and have been productive of very beneficial results. The other plan proposed the establishment of a Board of Agriculture, and was advocated by an eminent citizen, now deceased, who adorned his life and enriched the State by studies exclusively practical and eminently useful.[14]

We have many earnest admonitions against a State debt, and against a national debt, from those to whom this generation is indebted for all its experience of either. But I confess that the debt which it seems to me ought most carefully to be avoided, is that which results from an unrestricted importation of foreign luxuries, without an equivalent exportation of agricultural productions in exchange. The inhabitants of this State alone pay annually for foreign wines more than the interest upon the cost of all its canals and railroads; and for foreign silks an amount not less than the original cost of the Erie canal. Two provinces in Italy, with a population less than that of this State, and a climate represented as less genial to the mulberry and the silk worm, export silk of the value annually of twenty-five millions of dollars. I cannot believe that our country, and especially this State, will always be content to retain its tributary condition. I have observed with pleasure that the School District Library, now in the course of publication by the enterprising Harpers, contains several interesting and instructive treatises upon political economy and agriculture, which cannot be without their just influence.

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[14] An act to promote agriculture, chapter 169, passed May 5, appropriated $8,000 for distribution to the state and local societies according to a specified ratio, and societies receiving voluntary contributions were entitled to an equal sum from the appropriation, but not exceeding the amount apportioned to the State Society or a county. The act also contained provisions relating to the organization and administration of agricultural societies.

The fruits of the seed thus scattered are sure to be gathered. It is only to be regretted that this generation should not allow itself to anticipate them.[15]

It was submitted to your predecessors, that while we are obliged, by the laws of the United States, to preserve an extended and inconvenient organization of the militia, it would be just and consonant with the spirit of our institutions, that the taxes and burthens of the service should be reduced and equalized. Our fellow citizens are enjoying the fruits of such a reform in the reduction of military fines, which was effected by a law passed at the last session. The rank and file of the militia are mustered twice in each year, once by regiments and once by companies, for the purposes of inspection, review and martial exercise. These parades would perhaps be less inconvenient, if they were ordered on consecutive days. Experience, however, has proved that they are entirely insufficient for instruction in military science. The number of days assigned for such duty will certainly not be increased. The law of Congress would be complied with by an annual muster for inspection on one day only; and for this inspection a parade by companies would be more convenient than one by regiments. Uniformed volunteer companies might be safely relied upon for police; and the formation of such companies would be encouraged, by abridging their term of service and by furnishing them with arms from the State Arsenal under proper restrictions. This would not affect the law prescribing the drills of officers, non-commissioned officers and musicians; and it might be beneficial to extend to this class some or all of the privileges allowed to uniform companies. Regimental courts-martial are inconvenient and oppressive. If the commandant of each company were required to re-

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15 Silk culture was intended to be encouraged by chapter 340, passed May 26, which provided a bounty of $.15 a pound for silk cocoons raised in the state, and $.50 a pound for domestic reeled silk to be paid from the State Treasury.

port all delinquencies to a justice of the peace, that officer could be charged with the duty of imposing and collecting the penalties prescribed by law.

It is a well settled principle of the Society of Friends, that its members can neither conscientiously bear arms, nor contribute for military purposes. The Constitution defers to these scruples, by exempting those who entertain them from the performance of military duty; but it exacts a commutation, the avails of which the law directs shall be applied to the support of the militia system.[c] To this commutation the Friends raise the same conscientious objection, and urge it in a manner sufficiently general and persevering to show that it is neither temporary nor capricious; while their known liberality proves that the objection does not arise from any unwillingness to bear an equal portion of the burthens of government. Every year produces instances in which the property of Friends is sacrificed, or their persons imprisoned for conscience-sake. In such cases I have never refused to remit the penalties imposed. But such a practice, if it should become general, would be an exercise of the pardoning power to abrogate a part of the organic law of the State. I am aware that the question has its difficulties. It is supposed that the grievance can only be removed by an amendment of the Constitution; and there is not yet any sufficient evidence, that the people are prepared to make this concession to the consciences of those who ask it in that inoffensive spirit which marks all their public actions. I assume to speak only my individual sentiments when I say, that I respect the principle out of which the difficulty arises. Believing that war is the chiefest of national calamities, I am quite willing to see the principle of non-resistance obtain all the influence it is likely to acquire in this country, which above all others needs peace. For this reason, as well as because I regard concessions to conscience, in matters not affecting public morals, as essen-

[c] Const. 1821, art. 7, § 5.

tial to religious liberty, I should cheerfully consent to the amendment of the Constitution in this respect.

I have, on all proper occasions, directed the attention of the Legislature to the violations of the elective franchise. An act, passed in 1839, has had a beneficial operation in preventing what was called colonization in wards and towns, and in securing a more satisfactory scrutiny into the qualifications of persons whose right to vote is questioned at the polls. The act of 1840, regulating elections in the city of New York, has been universally satisfactory in its provisions for dividing the wards into election districts, and reducing the period for elections, to one day. Although the registry of voters under the law is alleged by many to be imperfect, and by others has been deemed altogether unjust and unnecessary, I am free to acknowledge my conviction that it has excluded many illegal votes; and I am not possessed of any satisfactory evidence, that its operation has deprived any citizen of his suffrage. Legislation concerning the elective franchise ought never to be governed by partisan views. The present season of repose from political contest is favorable to the adoption of measures which will be satisfactory to all. I recommend that the time allowed for holding the general election, and for the canvass in the several towns, be reduced to one day, and that to facilitate the proceedings and promote the convenience of voters, the towns and wards be divided into election districts by their respective inspectors. To those measures it will be proposed by some of our fellow-citizens to add a registry of voters in cities and villages, while others will desire its extension throughout the State. The principle involved in these propositions is very simple. If a law establishing a registry can be passed, which in its operation will exclude no legal voters, and if illegal voting can in no other way be effectually prevented, such a measure ought to be adopted. But no law ought to be passed, which will cause unnecessary inconvenience to legal voters. Your bet-

ter acquaintance with the exigencies of the case and with the sentiments of our fellow-citizens will enable you to dispose of the subject as will be most conducive to the general welfare.[16]

I recommend that it be made a felony for any unqualified person wilfully to vote, or cause his name to be registered; and that punishment no less severe be visited upon the unworthy citizen who shall aid or abet such crimes. He who gives, and he who takes a bribe, should not only be severely punished, but be forever afterward disfranchised. I recommend that the disfranchisement in such cases be made a part of the punishment incident to conviction, in the same manner as the incompetency to give testimony is in convictions for perjury.

It is too much forgotten that in establishing universal suffrage, we have brought into operation a new element of government. It is the equal distribution of political power among all the citizens over whom power is to be exercised. Universal suffrage is the condition by which we secure universal acquiescence in the laws. But it is a mighty element of power, and requires the most perfect safeguards to secure its conservative and rightful action. We must not only establish all needful safeguards, but we must constantly maintain them, and, after all, we must look more to the moral elevation of electors than to penal enactments to secure the purity of elections. No efforts which overlook any class enjoying the elective franchise, can be effectual to accomplish this great object.

Previous to 1802, no foreigner could be naturalized until after a residence of fourteen years. No one has better understood the tendency of republican institutions or entertained more just views of the principles upon which they were founded than the illustrious citizen who in that year recommended to Congress an amelioration of the

[16] Chapter 301, provided for the creation of election districts in cities other than New York.

naturalization laws.* "Considering the ordinary chances of human life," he observed, "a denial of citizenship under a residence of fourteen years is a denial to a great portion of those who ask it, and controls a policy pursued from their first settlement, by many of the states, and still believed to be of consequence to their prosperity. And shall we refuse the unhappy fugitives from distress, that hospitality which the savages of the wilderness extended to our fathers arriving in this land? Shall oppressed humanity find no asylum on the globe? The Constitution has wisely provided that for admission to certain offices of important trust, a residence shall be required sufficient to develop character and design.[d] But might not the general character and capabilities of a citizen be safely communicated to every one manifesting a *bona fide* purpose of embarking his life and fortunes permanently with us?" In concurrence with these suggestions, Congress passed the act now in force concerning naturalization. Probably half a million of persons have since that time complied with its provisions, and secured to themselves the rights of citizenship; and there cannot now be less than half that number of electors of foreign birth in the United States. This class is largely increasing. The number of emigrants arriving at the port of New York in 1828 was about twenty thousand. The number in 1840 was sixty-one thousand. Although the liberal and enlightened opinions of Jefferson have been the settled policy of the country for almost forty years, yet an issue is still maintained upon those opinions between a portion of our fellow-citizens and those to whom the law, passed in conformity with those sentiments, has given a full participation in our political rights and privileges. Hence arise mutual jealousies. The consequences of these jealousies are seen in the separation and alienation of classes having common interests; in the misfor-

* See President Jefferson's annual message to Congress, December 8, 1801.

[d] U. S. Const. art. 1, § 2, clause 2; § 3, clause 3; art. 2, § 1, clause 5.

tunes of the weaker, in apprehensions of insecurity on the part of the stronger, and in the demoralization of portions of both; in frauds at election and fraudulent proceedings under the naturalization laws. The policy and measures which I have recommended have therefore had for their object, the elevation of the social condition of emigrants and the assimilation of their habits, principles and opinions with our own.

Not much, however, can be accomplished by legislation, to affect the relations between masses of adult citizens, and the change desired in this respect must be left chiefly to time and the operation of our institutions. But it is not so in regard to the rising generation. The census of the United States is said to show, that there are forty-three thousand eight hundred and seventy-one white persons in this State who have passed the age of twenty years, without having learned to read and write. Let us make allowance for any proportion of adult foreigners, and there yet remains a large number of uneducated native citizens. The number of children now growing up in the same manner, does not fall short of thirty thousand. These are the offspring, not of prosperity and affluence, but of poverty and misfortune. Knowing from the records of our penitentiaries, that of this neglected class, those are often more fortunate, who, from precocity in vice, secure admission into the House of Refuge, or the State Prison through the ways of crime, and knowing too that almost every application for pardon is urged on the ground of neglected education, I have felt it an imperative duty to appeal to the Legislature, to render our system of education as comprehensive as the purposes for which it was established. Of one thousand and fifty-eight children in the Almshouse of the city of New York, one-sixth part is of American parentage, one-sixth was born abroad, and the remainder are the children of foreigners; and of two hundred and fifty children in the House of Refuge, more than one-half were either

born abroad, or of foreign parents. The poverty, misfortunes, accidents and prejudices to which foreigners are exposed, satisfactorily account to my mind for the undue proportion of their children in the neglected class to which the attention of the Legislature was called. Although the excellent public schools in the city of New York are open to all, and have long afforded gratuitous instruction to all who seek it, nevertheless the evil there exists in its greatest magnitude. Obviously, therefore, something more is necessary to remove it than has yet been done, unless we assume that society consents to leave it without a remedy. These circumstances led me to the reflection, that possibly a portion of those whom other efforts had failed to reach might be brought within the nurture of the schools, by employing for their instruction teachers who, from their relations towards them, might be expected to secure their confidence. When the census of 1850 shall be taken, I trust it will show that within the borders of the State of New York there is no child of sufficient years who is unable to read and write. I am sure it will then be acknowledged that when, ten years before, there were thirty thousand children growing up in ignorance and vice, a suggestion to seek them wherever found, and win them to the ways of knowledge and virtue by persuasion, sympathy and kindness, was prompted by a sincere desire for the common good. I have no pride of opinion concerning the manner in which the education of those whom I have brought to your notice shall be secured, although I might derive satisfaction from the reflection that amid abundant misrepresentations of the method suggested, no one has contended that it would be ineffectual, nor has any other plan been proposed. I observe, on the contrary, with deep regret, that the evil remains as before; and the question recurs, not merely how or by whom shall instruction be given, but whether it shall be given at all, or be altogether withheld. Others may be content with a system that erects free schools and offers

gratuitous instruction; but I trust I shall be allowed to entertain the opinions that no system is perfect that does not accomplish what it proposes; that our system is therefore deficient in comprehensiveness, in the exact proportion of the children that it leaves uneducated; that knowledge, however acquired, is better than ignorance; and that neither error, accident nor prejudice, ought to be permitted to deprive the State of the education of her citizens. Cherishing such opinions, I could not enjoy the consciousness of having discharged my duty, if any effort had been omitted, which was calculated to bring within the schools all who are destined to exercise the rights of citizenship; nor shall I feel that the system is perfect, or liberty safe, until that object be accomplished. Not personally concerned about such misapprehensions as have arisen, but desirous to remove every obstacle to the accomplishment of so important an object, I very freely declare that I seek the education of those whom I have brought before you, not to perpetuate any prejudices or distinctions which deprive them of instruction, but in disregard of all such distinctions and prejudices. I solicit their education, less from sympathy, than because the welfare of the State demands it, and cannot dispense with it. As native citizens, they are born to the right of suffrage. I ask that they may at least be taught to read and write; and in asking this, I require no more for them, than I have diligently endeavored to secure to the inmates of our penitentiaries, who have forfeited that inestimable franchise by crimes, and also to an unfortunate race, which, having been plunged by us into degredation and ignorance, has been excluded from the franchise by an arbitrary property qualification incongruous with all our institutions. I have not recommended, nor do I seek the education of any class in foreign languages, or in particular creeds or faiths; but fully believing with the author of the Declaration of Independence, that even error may be safely tolerated, where reason is

left free to combat it, and therefore indulging no apprehensions from the influence of any language or creed among an enlightened people, I desire the education of the entire rising generation in all the elements of knowledge we possess, and in that tongue which is the universal language of our countrymen. To me the most interesting of all our republican institutions is the Common School. I seek not to disturb, in any manner, its peaceful and assiduous exercises, and least of all with contentions about faith or forms. I desire the education of all the children in the commonwealth in morality and virtue, leaving matters of conscience where, according to the principles of civil and religious liberty established by our Constitution and laws, they rightfully belong.[17]

The policy of the State in regard to internal improvements has been a subject of much difficulty. In 1839, the State having completed the Erie and Champlain, the Chenango, the Oswego, the Cayuga and Seneca, the Chemung and the Crooked Lake canals, and thus opened to the city of New York an inland navigation of four thousand five hundred miles, was found engaged in enlarging the Erie canal to the dimensions of seventy feet in width by seven feet in depth, in making the Genesee Valley and Black River canals, and in aiding by the loan of its credit the construction of the New York and Erie, the Auburn and Syracuse, the Ithaca and Owego, and the Catskill and Canajoharie railroads.

The report of the Comptroller showed that the debt which had been contracted for the construction of the Erie

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17 By chapter 234, passed May 25, land occupied by the Onondaga Indians was to be included in a separate school district, and the commissioners of common schools in the town or towns in which such district was situated were required to appoint three head men of the tribe as trustees of the district. An apportionment of school money was to be made to the district. Chapter 260, passed May 26, provided for separate schools for colored children in each town. The same act made provision for the attendance of all children of school age, and authorized the hiring of rooms for school purposes if necessary.

and Champlain canals was virtually paid; that the liabilities for the completed lateral canals were about three and a half millions of dollars, which, added to the remaining debt of the State, exclusive of debts assumed for the unfinished works, made an aggregate of four and a half millions of dollars. The estimated expense of the works in progress, as appeared by the report of the Canal Commissioners, was about fifteen and a half millions of dollars; which, if added to the existing debt, would have made an aggregate of about twenty millions, the annual interest of which would be one million. The tolls of the Erie and Champlain canals, after deducting the expenses of collection, had increased from $839,925, in 1826, to $1,504,384 in 1836; and although the tolls were diminished during the commercial revulsion of 1837 and 1838, yet their future increase could not be a matter of question, and it was equally certain that they would be accelerated and augmented by the growth of the trade from the western States, and by the reduction of the expense of navigating the Erie canal when it should be enlarged. The Canal Commissioners communicated to the Legislature their opinion, that in a few years after the completion of the enlargement, the tolls would amount to three millions of dollars. If from this sum even one million of dollars were to be allowed for the expense of superintendence and repairs, the enlarged Erie canal would yield a revenue of two millions of dollars, double the amount required to pay the interest on the debt of twenty millions of dollars. The annual net revenue of the State, after the completion of the enlargement, would therefore be one million of dollars. The view thus taken in 1839 of the existing and anticipated condition of the State was regarded by me as justifying the vigorous prosecution of the public works, and the expression of a confident hope that the time had come when the State might realize the long cherished expectation of an extension of her system of internal improvements. Ex-

perience has fully confirmed the positions then assumed, so far as they depended on the revenue from the canals. The tolls during the season of navigation in 1840, were $1,775,747.57.

The Legislature of 1836 had directed stocks to be issued to the amount of two millions eight hundred thousand dollars, for the construction of the Genesee Valley and Black River canals; and the Legislature of 1838, under an earnest recommendation by my predecessor of a vigorous and speedy prosecution of the enlargement of the Erie canal, had appropriated four millions of dollars to that object. The Canal Commissioners, under the express direction of the Legislature to put under contract, with as little delay as possible, such portions as would best secure the completion of the entire enlargement with double locks on the whole line, had made contracts for one half of the whole improvement.

Those who in 1839 came into the conduct of public affairs addressed themselves, in good faith, to the performance of their duties in regard to the public works. A sudden change, however, then occurred. The official report of the retiring Comptroller, instead of the glowing view of the fiscal condition of the State, which had in 1836 induced the Legislature to undertake the construction of three stupendous works, and had impelled the Legislature of 1838 to expedite the prosecution of that one which was more expensive than all the improvements which the State had made, exhibited a dark picture of irredeemable debt and perpetual taxation. The policy to which, under the auspices of the previous administration, the State was committed, and to which it had already devoted twenty millions of dollars, besides pledging its credit in aid of associated enterprise to the extent of four and a half millions, was now represented as involving the people in a debt of forty millions of dollars; and what was still more extraordinary, all the responsibility of the policy was assigned, not to the ad-

ministration under whose auspices it had been adopted, or to the Legislatures of 1836 and 1838, by whom all the appropriations had been made, but to an administration upon which had devolved the duty of finishing works long before begun, by which no money had been expended, and under which no appropriation had been made. In his report of 1839, the discovery was promulgated by the late Comptroller, that the Erie and Champlain canals, whose revenues had been relied upon by the Legislatures of 1836 and 1838, as justifying an expenditure of twenty millions of dollars in new enterprises, had never yielded a revenue equal to the interest on their cost. Although the dimensions of the enlarged canal had in 1835 been fixed at seventy feet in width by seven feet in depth, and although one half of this great work was under contract, it was pretended to be further discovered that the enlargement had been undertaken upon a scale absurd in magnitude and profligate in expense. It was proposed to reduce the dimensions of the enlargement to sixty feet in width and six feet in depth; and it was contended that no enlargement whatever would be necessary for the purposes of trade for a period of ten, twenty or thirty years. It was maintained by the opponents of internal improvement, that the construction of the Black River and Genesee Valley canals and the maintenance of the faith of the Legislature pledged in 1838 to the New York and Erie Railroad Company, were in policy as inconsistent with the true interests of the State, and as useless and dangerous, as would be the creation of titles of nobility with patents of numerous landed estates, requiring an outlay of twenty-five millions of dollars, and an annual stipend of more than one million to be raised by taxes upon the people. It was also insisted that the first business of legislation should be to repeal the laws authorizing the construction of the Genesee Valley and Black River Canals, and also the laws authorizing loans to canal and railroad companies, to stop the enlarge-

ment of the Erie canal or circumscribe it within reasonable bounds, to raise the tolls on the lateral canals so that the revenues from those canals might pay the interest on their cost and the annual expense of their repairs, and to relinquish such of them as could not be made to do so. And all this was urged, as if the sudden abandonment of those enterprises would not involve in wretchedness thousands of families, and as if our State, whose successful policy had been adopted as a model by other States, and had elicited the admiration of mankind, had suddenly become destitute of wisdom, honor and good faith. History may safely be charged with the duty of assigning the reasons for such singular inconsistencies. It is necessary, however, for the present purpose, to observe that the same Canal Commissioners who had in 1836 estimated the cost of the works which the State then assumed, at fifteen and a half millions of dollars, when required in 1839 to re-examine their estimates, reported the cost of the same works at thirty and a half millions, and that consequently the debt to which the State had become committed arose from twenty millions to thirty-five millions, requiring an annual expenditure for interest of one million seven hundred and fifty thousand dollars. The discovery of this extraordinary error in the estimates of the Commissioners happened in a conjuncture when, although the credit of many of the States was brought to a crisis, the spirit of internal improvement pervaded the community, and our fellow-citizens, relying upon the views of our resources before presented, were looking confidently to the public treasury for appropriations to various improvements in which they justly felt an absorbing interest. The immediate results at home and abroad were a severe shock to confidence in the faith of the State, and alarm for its ultimate solvency, jealousies in each region in regard to improvements immediately beneficial to others, and impatience in every portion of the State for such immediate and large appropria-

tions as would secure the construction of favored works before the apprehended catastrophe should take place. It was doubted for a time whether the tendency of all this was to a desperate compromise by reckless expenditure, or to an immediate suspension of all the public works.

The policy recommended in this emergency was to retrench expenditures, and persevere in the construction of the public works with moderation and economy, to refer the plans of all the unfinished improvements, including the enlargement of the Erie canal, to competent engineers to ascertain what portions of the same might be delayed without detriment to the public interest, and what expense might be saved by executing other portions in a manner equally effective, but more plain and economical, and to establish a Canal Board for the purpose of preventing erroneous estimates and inconsiderate legislation. It was moreover especially insisted, that, with a view to guard against a dangerous increase of debt and the possibility of taxation, all issues of stock should thenceforth be so limited that the whole debt of the State should at all times be kept within such bounds, that the interest on it should not exceed the net revenue from canal tolls, and that the increase of that revenue should be devoted to the extinguishment of the public debt. It was assumed that although the adoption of this rule might seem to delay for a season the progress, it would ensure the completion of the great works in contemplation in different parts of the State, and it was maintained that the retardation, which had from such obvious causes become necessary, ought by no means to be considered as an abandonment of the policy of internal improvement, but that on the contrary such retardation was indispensable, and was indeed the only mode of carrying it forward with certainty and success. This policy, which in its more important parts prevailed in the Legislature of 1840, is respectfully recommended to your favor.

I tender you my congratulations upon the happy termination of the embarrassments to which it has been my duty to refer. The people of this State have stood firm by the pillars of her strength and glory. Time enough has elapsed to show that our fiscal condition is sound; that, although the expense of our improvements was erroneously estimated, our revenues are abundantly adequate; and that, with judicious management, we may persevere firmly in the policy of internal improvement, with a confident expectation of accomplishing ultimately all that has been contemplated.

The eastern section of the Erie canal has, during the last season, been subjected to a test of its ability. From the opening to the close of navigation, a period of seven months and a half, there was an average lockage at each lock of one boat in eleven minutes. The irregular arrival of boats has caused much detention and often delays of several days. The immediate enlargement, therefore, of this portion of the canal is indispensable to the public convenience, and to the security of trade. One million eight hundred and five thousand one hundred and thirty-five barrels of flour, and one million three hundred and ninety-five thousand one hundred and ninety-five bushels of wheat were delivered at the eastern termination of the canal during the past season. Six hundred and forty-six thousand nine hundred and seventy barrels of flour, and one million four hundred and sixty-seven thousand nine hundred and four bushels of wheat entered the canal from Lake Erie. Of the flour and wheat which entered the canal at Buffalo, five hundred and five thousand two hundred and sixty-two barrels of flour, and seven hundred and twenty-five thousand and twenty-five bushels of wheat were received from the State of Ohio, one hundred and twelve thousand two hundred and fifteen barrels of flour, and ninety-seven thousand two hundred and forty-nine bushels of wheat from the State of Michigan, thirteen thousand seven hun-

dred and twenty-six barrels of flour, and forty-eight thousand two hundred and seventy-nine bushels of wheat from the State of Indiana, two thousand two hundred and fifty-nine barrels of flour and ten thousand six hundred and thirty-four bushels of wheat from the State of Illinois, and one hundred and sixty-six barrels of flour from the Territory of Wisconsin.

These facts serve to show, not only how safely we may rely upon a continued increase of revenue, but also how much we are indebted to our system of internal improvement for the supply of our markets. If such benefits are enjoyed while the Erie canal is in an imperfect condition, and while the Western States are yet in their infancy, no estimates heretofore made have approximated to the results which will be exhibited when the Erie canal shall have been enlarged, the western States fully settled, and their improvements completed.

The earliest practicable notice should be given of the time when the enlargement will be finished. The capital, invested in boats and other property used in navigating the canal, exceeds three millions of dollars. Very extensive business arrangements among our fellow-citizens will be effected by the improvement in navigation, and time should be allowed to prepare for the change.

It is the peculiar and rightful province of the Legislature to determine the amount to which the appropriations can be carried, and to give them their direction. I may be permitted, however, to observe that the object of internal improvement is not to confer local advantages, but to promote the general welfare; that, although revenue is necessarily an intermediate, it ought not to be the ultimate purpose of the system, that moderation and economy are required even less to save us from the effects of improvidence, than because they are necessary to render the system as comprehensive as the wants of the State. Legislative action should, therefore, always have in view the im-

provement of every region. Although some portions of the State may excel others in producing one staple, no portion is without fertility and resources of wealth. There are some regions in which canals would be impracticable or unprofitable, but there are none in which some form of modern improvement cannot be successfully introduced. No one who studies the general welfare should wish to have the productions of one district dependent for a market upon the precarious navigation of fordable rivers, while those of another are transported upon an enlarged canal or by steam power; to see mails carried weekly through one portion of the State by the slow post wagon, while other portions of our citizens are receiving daily intelligence, transmitted by railroads. Those who suppose that natural obstacles, wherever existing, cannot be overcome or removed, or that the course of trade cannot be effected by artificial improvements, may contemplate with advantage the success which has crowned the efforts of our State in concentering, in its own market, the trade of its northern, southern and western counties, which thirty years ago had no other channels of trade than rivers flowing towards widely distant ports. Another example will soon be afforded, in the successful attempt of the citizens of Massachusetts to divert from the valley of the Hudson, at least the winter travel and trade between this city and the sea shore; an enterprise which they are prosecuting firmly and rapidly, while in regard to that particular interest we are relying upon the sublime but hazardous theory of leaving the course of trade to the laws impressed by God upon the mind and matter. [See note 10.]

Although seventeen millions of people have founded their cities and established their homes under our laws, less than one-third of the territory within the boundaries of the confederacy is occupied or appropriated. What remains is the national domain. Every acre of it has a value — for its future improvement is as certain as the present cultiva-

tion of the lands we occupy. At the close of the Revolution, the failure of the public credit effectually prevented the prosperity expected to follow the establishment of independence and the return of peace, while the efforts of the States to establish a more perfect Union were embarrassed by their conflicting claims to the vast wilderness lying beyond the western settlements. With magnanimity characteristic of the revolutionary period, each State ceded its interest to the Federal Government as a trustee. The whole domain was thus made the common property of all, and it was pledged to the public creditors as a basis for the redemption of the funded debts of the Union. In 1833 those debts were discharged. The revenues, derived from imposts upon imported merchandise are, or ought always to be, adequate to the ordinary expenses of the government. Although those revenues may be temporarily disturbed and diminished by errors in the laws regulating them, or by foreign war, or commercial revulsion, yet they soon regain their regularity and fulness, and the chief difficulty in conducting the affairs of the Federal Government has heretofore been, and is likely always to be, how to keep the revenues within the bounds of reasonable expenditure, without withdrawing all protection from national industry. The reason is obvious. The States have reserved the chief responsibilities and powers of legislation for the public welfare, but have yielded to the General Government an undue proportion of the taxes. The maintenance of public defence is sometimes made a pretext for withholding from the States the proceeds of the national domain. But extensive military preparations in time of peace are generally preparations to compel subjection at home, and to subvert free institutions. It may safely be left to the people to decide, which are the best defences of liberty, common schools or fortifications, canals and railroads, or standing armies. Danger from foreign aggression is manifestly diminishing, and if unhappily the scourge

of nations shall fall upon us, the ability of the States to maintain the public defence would be increased by the distribution among them of the revenues from the public domain. Experience has proved that the organization of the General Government is ill adapted to secure accountability, at least on the part of its subordinate agents. The Executive, from whom all such agents derive their powers, is too independent of Congress, and every department is quite too far removed from the people to allow that popular supervision, which is so salutary in its operations in the several States. The distribution of the avails of the public lands was resisted last year by misrepresenting it as a measure by which the General Government was to assume or guaranty the debts of the several States. So far as I am informed, no such proposition has been contemplated by any one of the States. But the occasion and the motive for this misrepresentation having passed, it is hoped that the true question may now be brought before the people on its merits. When we remember that the distribution heretofore made of the surplus revenue was attained with much difficulty, and then only escaped an executive veto, by receiving the form of a loan to the States; when we remember that a bill which had passed both houses of Congress, directing an apportionment of the avails of the sales of the public lands, was lost for want of approval by the President, and that subsequently a bill to release, without equivalent, a large portion of the domain to the new States within which it lies, was passed by the Senate, and that a similar bill is now before that body, we shall be satisfied that the true form of the question is, whether those revenues shall now be distributed, or be lost forever.

So long ago as 1806, the discharge of the national debt, and the consequent accumulation of surplus revenues, from imposts and the public lands, were foreseen by the enlightened and sagacious statesmen who then occupied the Executive Department of the Federal Government. In two

annual messages, he earnestly insisted that the anticipated surplus should be appropriated to the improvement of roads, canals, rivers, education and other great foundations of prosperity and union, and he suggested an amendment of the Constitution for this purpose. The accumulation foreseen by President Jefferson was delayed by interruptions of our commerce until 1833. The eminent citizen, who in 1829 entered upon the duties of the Executive Department, observed, in his first message, that every member of the Union, in peace and in war, would be benefited by the improvement of inland navigation and the construction of highways in the several States. "Let us then," he added, "endeavor to attain this benefit in a mode that will be satisfactory to all. That hitherto adopted has, by many of our fellow-citizens, been deprecated as an infraction of the Constitution, while by others it has been viewed as inexpedient. All feel that it has been employed at the expense of harmony in the legislative councils. To avoid these evils, it appears to me the most safe, just and federal disposition, which could be made of the surplus revenue, would be its apportionment among the several States, according to the ratio of representation." This suggestion by President Jackson met a favorable response throughout the Union, and was especially approved in this State. The Governor, in his message of 1830, observed, "Our funds applicable to the extension of our public works may be augmented at no distant day, from a new source. The duties upon the importation of merchandise are secured, by the Constitution of the United States, to the General Government, and have been its greatest source of revenue for all purposes.* In a very few years the national debt will be paid off, and as but a small portion of the revenue will be consumed in conducting the affairs of the Union within the constitutional limits, and as there are prudential reasons for continuing the duties, to a certain extent, there

*U. S. Const. art. 1, § 8, clause 1.

can be no valid objection to a distribution of the surplus revenues among the States, to be disposed of at their discretion. If constitutional obstacles exist against the measure, they may be removed by constitutional means."

I acknowledge my inability to present a full view of the benefits this great measure would confer upon the people of this State. Our seminaries of learning are now enjoying an annual endowment of two hundred and eight thousand dollars, arising from the apportionment heretofore made. The amount of the revenues from the public lands for the present year, as estimated by the Secretary of the Treasury of the United States, will be three and a half millions of dollars, of which the share of this State would be nearly six hundred thousand dollars. An imperfect idea of the rapid settlement of the public lands may be conceived from the fact, that the population of the State of Indiana has increased, within the last ten years, from three hundred and forty-one thousand, to six hundred and eighty-three thousand; and that of the State of Michigan, from thirty-one thousand, to two hundred and eleven thousand. What the actual value of our share of such a distribution would be, cannot be estimated, but it may safely be assumed that it would far exceed all that we have expended in the construction of canals and roads, the foundation of charities, the erection of penitentiaries, and the endowment of colleges, academies and schools. After such an accession to our revenues, the various enterprises of internal improvement would no longer be rivals, prosecuted against the influence of local jealousies and alarms of taxation. The present generation would anticipate the blessings in store for posterity, and every portion of the State would be admitted immediately to their enjoyment. It would be in our power, not only to extend our system of improvement, but also to increase in various other ways the general happiness. We are now obliged to practise a cold and calculating charity. We have more than twenty-

three hundred lunatics in the State, yet we have made provision for the relief of only two hundred and fifty. We have more than a thousand deaf and dumb persons; yet we are obliged to select by favor from among them, instead of pouring the lights of truth and knowledge into the minds of all. Our almshouses are perhaps sufficiently convenient for those who are brought into them by idleness and vice; but do they afford all the enjoyments we would be happy to yield to the aged, the sick, the widow, and the orphan, whose afflictions are the result of providential visitation, unattended by vice or error of their own? Should we longer contend about the apportionment of moneys devoted to education, if our funds were ample for the full endowment of all our seminaries of learning? Would there not be an end to the great fault of our common schools, the small compensation paid to teachers, if we could adequately increase the Common School Fund, upon which we rely for the education of more than half a million of children? But if it be maintained that enough has been done for the relief of wretchedness and the improvement of the foundations of prosperity and union, what reason can be assigned why, with the revenues in question, acknowledged to be the property of the people, the burthens of the people should not be diminished? Let us bring annually into the treasury of the State her proportion of these revenues, and our fellow citizens can be relieved of the burthen of repairing common roads, and of paying tolls upon canals, railroads and turnpikes, and from the heavy expenses of the administration of justice and the support of schools and charities. We are sometimes called, by the adversaries of internal improvement, to contemplate a condition of exhausting taxation. Who can object to a measure which would almost secure a general exemption from the burthens of government?

But we shall derive from a distribution of the surplus revenues other advantages than those resulting directly.

We are to participate largely in the benefits conferred upon other States. Our system of internal improvement is only a part of that entire system, contemplated by the Father of our country, and relied upon by him to accomplish the object of his earnest solicitude — the binding of the States together in an indissoluble union of affection and interest. Not to dwell upon the importance of thus securing the ark of our political safety against the storms to which it must sooner or later be exposed, we have interests of a subordinate character, in the completion of the public works of our sister States. If such a distribution should be made, we should be able if we are not now, to connect the Chenango, the Chemung, and the Genesee Valley canals with the railroads and canals of Pennsylvania, render them productive of revenue, and at the same time give a new impulse to our domestic trade. Lake Ontario and the St. Lawrence river would no longer be separated from the central valley through which our commerce flows, but the vast territory which intervenes would be traversed by railroads and canals, its forests would disappear, its soil would be rendered productive, and its mineral wealth be no longer left among the neglected resources of the State. Ohio proceeds in her system slowly. Michigan labors under great difficulties in her efforts to construct roads that will establish a connection between her inland regions and Lake Erie. Indiana and Illinois are struggling with extreme embarrassment in the prosecution of works upon a scale of equal magnitude with our own. It is not surprising that the financial difficulties of those States are magnified, and their credit traduced in the stock markets of Europe. But it is strange, indeed, when we reflect that they are members of this confederacy, parts seeking closer union with the great whole, that they should be visited with the censure of the Federal Government, in a season of embarrassment, and that the Senate of the United States should, in the face of the world, gratuitously refuse to grant, in their behalf, a guar-

antee which they have never solicited and never desired. One might suppose, from the cold speculations sometimes heard among ourselves concerning the improvidence of those States, that they were hostile or at least rival powers, and that our security and prosperity rose with the decline of theirs. Yet it is far otherwise. They are communities bound to us by interest, as well as by consanguinity between their citizens and our own; their prosperity is our prosperity, and no calamity falls upon them by which we do not suffer, although we may withhold our sympathy. The great lakes, about twenty-five hundred miles in length, may be regarded as a prolongation of the canal we have made across the isthmus which separates their waters from those of the Atlantic. Following the policy which has dictated the construction of our lateral canals, the States situated upon the shores of those lakes, have severally undertaken the construction of improvements, to connect their interior regions with these inland seas. The Ohio canal, three hundred and twenty miles in length, reaching from Lake Erie to the great river which separates the States of Ohio and Kentucky, secures to us the trade of the nearer regions of the great west. The trade of the central portion of the west will be given to us by two other improvements, to wit, the Wabash and Erie canal, two hundred and thirty-four miles in length, extending from Lake Erie through the States of Ohio and Indiana, to the navigable waters of the Wabash river; and the Miami canal, two hundred and ten miles in length, reaching from the lake to the north bend of the Ohio river, and connecting with the Wabash canal at Fort Defiance. The canal of Illinois will extend to the Mississippi the navigation we now enjoy, and thus bring to us the trade of the remotest western settlements. Of these canals the Ohio is already completed. That portion of the Wabash and Erie canal, one hundred and forty-four miles long, lying within the State of Indiana, is finished, and the remaining portion, ninety miles in length, which

lies within the State of Ohio, is yet incomplete, but the late Governor of that State, in his last message, gave the assurance that it would be ready for navigation during the present year. Of the Miami canal, nearly the whole is under contract, and more than one hundred miles have been completed. Of the Illinois canal, which will cost about eight millions of dollars, about one-half is finished, and the construction of the remainder, unhappily retarded by financial embarrassment, might be hastened by the aid which the State of Illinois has a right to claim of the General Government, or by a speedy distribution of the proceeds of the public lands. When we consider the vast amount and value of the agricultural productions received from the Ohio canal alone, the only one of those canals yet in full operation, we may form some imperfect conception of the interest we have in the success of the system of internal improvement in the western States. And when such conceptions become as familiar as they are just, we shall manifest more of wisdom than even of philanthropy, by lending our western brethren all the aid in our power to complete what none but free and enlightened States could ever have undertaken. Views similar to these were commended to your predecessors and received their approval. If they accord with your own, I respectfully suggest the propriety of renewing the expression heretofore made in favor of the great measure I have advocated.[18]

The people of the United States, have, within the last year, in a manner prescribed by their own laws, in perfect tranquillity, chosen by free suffrage, and with universal acquiescence, the magistrates by whom all the powers of government shall be exercised under legal responsibilities, until those powers shall again return to themselves. However we may have differed concerning the questions which have been considered, all will agree that the peacefulness

18 The Legislature adopted concurrent resolutions similar in purport to those adopted in 1840, favoring the distribution of the proceeds of public lands among the states.

and good order, which have attended the proceeding, furnish ample proof that the people may safely be allowed to discuss every measure that concerns their welfare; and that neither force nor fraud is necessary to secure submission to rulers, where power is limited, reason enlightened, and suffrage universal.

The Chief Magistrate of the Union* will enter upon his trust with favorable auspices. The public good requires, and the public mind consents to, repose. Fortunate in experience of public service in the Senate and the field, in executive and diplomatic stations; fortunate in exemption from prejudice in favor of any erroneous policy hitherto pursued; fortunate in the enjoyment of his country's veneration and gratitude, and especially fortunate in having at once defined and reached the boundary of his ambition, the President can have no other objects than the public welfare and an honorable fame. The people expect that he will preserve peace, maintain the integrity of our territory, and the inviolability of our flag, co-operate with christian nations in suppressing piracy and the slave trade, avoid alliances for every other purpose, conduct our foreign relations with firmness and fairness, terminate our controversies with the Indian tribes, regain their confidence and protect them against cupidity and fraud, confine the action of the Executive Department within constitutional bounds, abstain from interference with elections and the domestic concerns of the States; defer to the wisdom of Congress, and submit to the will of the people; observe equal and exact justice to all men and all classes of men, and conduct public affairs with steadiness, that enterprise may not be disappointed; with economy, that labor may not be deprived of its rewards; and with due accountability of public agents, that republican institutions may suffer no reproach. If he shall endeavor to meet these expectations, no discontents can affect — no opposition can embarrass him; for he will act in harmony with the spirit of the Con-

* William Henry Harrison.

stitution and with the sentiments of the people. And when, like him whose fame is unapproachable, but whose wisdom and moderation this distinguished citizen has adopted as his great example, he shall have healed his country's wounds and restored her happiness and prosperity, he will enjoy the rare felicity of a retirement, more honored than even his distinguished station.[19]

When called two years since to survey the State for the purpose of submitting the result to the Legislature, I could not fail to observe everywhere enduring impressions of the wisdom of De Witt Clinton. When considering how I could in any way contribute to diminish the burthens of the people, to promote public prosperity, to diffuse knowledge, to favor agriculture and encourage the arts, to develop the resources of the State, extend its interior communications by land and water, and equalize the advantages of free government among all my fellow citizens, I could not fail to see that his genius had marked out in all these respects the policy which the State, in the emulous spirit expressed by her noble motto, could pursue to a higher and happier social condition than had ever yet been attained by any community. When reflecting upon the misapprehensions, difficulties and embarrassments to be encountered, I found in his great fame an evidence that such a policy might be pursued with safety, although it must sometimes come in conflict with local jealousies and temporary interests. Under the influence of feelings inspired by the occasion, I ventured to express a hope that the time had arrived when the State was prepared to acknowledge her obligations to so distinguished a benefactor. In this suggestion I confess that I anticipated, but I trust not by any very long period, the justice of my fellow citizens.

WILLIAM H. SEWARD.

Albany, January 5, 1841.

[19] See special message of April 6, announcing the death of President Harrison.

SPECIAL MESSAGES.

January 7. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 6, 1841.

GENTLEMEN.—The complaint of John A. Barry against the Honorable William Inglis, associate judge of the court of common pleas in and for the city and county of New York, referred by the Assembly to me on the ninth day of May, 1840, and the reply of that officer, have been considered. I am of the opinion that there are no grounds for the removal of the said judge from office.

WILLIAM H. SEWARD."

The complaint against Judge Inglis was that he had been negligent in deciding the question involving the propriety of the writ of *habeas corpus,* having held the matter some four months. There was no charge of corruption or other misconduct. The Assembly committee which had the matter under consideration in 1840, reported that the facts did not warrant a proceeding for impeachment.

January 7. To the Assembly: Transmitting the annual report of the Commissary General.

January 8. To the Assembly: Transmitting a remonstrance of the people of the district of Columbia against the abuse of the power of the exclusive legislation by Congress over the district.[f] See Assembly Document No. 7.

January 8. To the Assembly: Transmitting resolutions adopted by the Legislature of Connecticut, urging the resistance by all constitutional means, against every attempt to destroy or impair the protective policy of our government; and the enactment of such laws as will effectually protect the labor of this country from the policy and legislation of foreign governments.

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[f] U. S. Const. art. 1, § 8, clause 17.

January 8. To the Assembly: Transmitting resolutions adopted by the Legislature of Connecticut which were similar in form to the resolutions adopted by the New York Legislature in 1840, relative to the distribution of the proceeds of public lands.

January 8. To the Assembly: Transmitting resolutions adopted by the Legislature of Vermont, recommending an amendment to the federal constitution restricting the eligibility of the President of the United States to a single term.

January 8. To the Assembly: Transmitting proceedings of the citizens of Georgetown in the district of Columbia, held on the 23d of July, 1840, protesting against the methods of government applied in the district by Congress, and requesting a retrocession of the territory embraced in the town from the District of Columbia to the State of Maryland.[g]

January 8. To the Assembly: Transmitting resolutions adopted by the Legislature of Michigan requesting congressional aid in the construction of a ship canal around the falls of St. Marie.

January 11. To the Assembly: Transmitting a communication from the marshal of the northern district of New York offering to deliver for the use of the Assembly a statistical aggregate collected under the laws of Congress for taking the census.[20]

January 13. To the Assembly: Transmitting the annual report of the Adjutant General.

January 27. To the Assembly: Transmitting resolutions adopted by the Legislature of Alabama protesting against a protective tariff.

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[g] U. S. Const. art. 1, § 8, clause 17.

[20] A concurrent resolution was adopted providing for a publication and distribution of a volume of statistics, including information contained in the federal census of 1840, and also other facts relating to various aspects of state affairs.

January 27. To the Assembly: Transmitting resolutions adopted by the Legislature of Indiana, approving the Vermont proposition for an amendment to the federal constitution restricting the eligibility of the president to a single term.

February 3. To the Assembly: Transmitting resolutions adopted by the Legislature of Pennsylvania, urging the distribution of the proceeds of public lands among the states on the basis of representative population; and also such a modification of the tariff as would increase the revenue to an amount sufficient for the purposes of government, without resorting to the proceeds of public lands.

February 9. To the Assembly: Transmitting a resolution adopted by the Legislature of Indiana recommending that presidential electors be chosen on the same day throughout the United States.

February 9. To the Assembly: Transmitting resolutions adopted by the Legislature of Alabama sustaining the claim of Georgia to the surrender by the State of Maine of persons alleged to have abducted the negro slave Atticus, asserting the right of each state to define crimes and felonies within its jurisdiction, which should be binding on every other state, and pledging its support in devising a plan by which this right of the state might be maintained.

February 13. To the Assembly: Transmitting resolutions adopted by the Legislature of Delaware, protesting against a partial distribution of the proceeds of public lands, and recommending that such proceeds be distributed among the States according to population, to be used for purposes of education.

February 17. To the Assembly: Transmitting resolutions adopted by the Legislature of Alabama, proposing to furnish copies of the reports of judicial decisions published in that state in exchange for reports of decisions of the New York courts.

February 17. To the Assembly: Transmitting the annual report of the persons engaged in the geological survey of the State.

February 17. To the Assembly: Transmitting a communication from Nathan Burchard, attorney for the Oneida Indians, concerning the payment of his annual salary, together with a report thereon from the Commissioners of the land office.[21]

February 23. To the Assembly: Transmitting resolutions adopted by the Legislature of Delaware and Kentucky, proposing an amendment to the federal constitution restricting the eligibility of the president to one term.

February 26. To the Assembly: Transmitting resolutions adopted by the Legislature of Rhode Island recommending an equitable distribution of the proceeds of public lands; urging the abrogation of the sub-treasury system, and the establishment of a national bank.

March 2. To the Assembly: Transmitting resolutions adopted by the Legislature of Indiana protesting against a partial distribution of the proceeds of public lands, also against a reduction of the minimum price except to establish a graduated price, and recommending a distribution of the net proceeds among all the states.

March 16. To the Assembly: Transmitting the resignation of Francis Granger, as a representative in Congress from the 26th district.[22]

March 20. To the Assembly: Transmitting resolutions adopted by the Legislature of Maryland, pledging the support of the state to the federal government in its negotiations relative to the northeastern boundary of the State of Maine and suggesting the basis of settlement.

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21 The appropriation act, chapter 274, passed May 26, directed the payment of $350 to Nathan Burchard for his services as attorney for the Oneida Indians.

22 A special election in the 26th Congressional District was provided for by chapter 91, passed April 3, and the Governor was authorized to issue a proclamation fixing the time for holding such election.

March 26. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *March 26th*, 1841.

I transmit resolutions of the Legislature of Mississippi, concerning the decision of the Executive of this State declining to comply with a requisition made by the Lieutenant-Governor of Virginia, in 1839, for the surrender of certain persons represented to be fugitives from justice, charged with the constructive offence of stealing a negro slave. I avail myself of the occasion to lay before the Legislature certain other proceedings affecting the same question.

On the 24th of February last, I issued a requisition to the Executive of Virginia for the surrender of Robert F. Curry, a fugitive from justice, charged with an aggravated crime of forgery. His Excellency the Governor of Virginia, admits the regularity of the requisition, and acknowledges that the fugitive has been arrested and is in actual custody in that Commonwealth upon the charge contained in the requisition. Nevertheless, he deems it proper to make his compliance with the requisition dependent upon a reversal of the decision heretofore made by the Executive of this State in the case before referred to, and to detain the fugitive in custody six months, to afford time to the Executive of this State to reconsider that subject. By the documents transmitted, it will be seen that I have deemed it my duty, under these extraordinary circumstances, to inform the Governor of Virginia without delay, that the decision in question cannot be reversed.

It appears from the public prints, and is undoubtedly true, that an act has been passed by the Legislature of Virginia, designed to subject vessels owned or navigated by citizens of this State and departing from Virginia, to inspection, and attempting to impose other onerous and offensive restrictions upon citizens of this State carrying on commerce with the State of Virginia. It is understood to

be among the provisions of this law that it shall take effect after the first day of May, 1842; but that his Excellency the Governor of that Commonwealth, may suspend the operation of the same until the end of the succeeding session of the Legislature of Virginia, whenever he shall be officially informed that the Executive of New York has consented to surrender the supposed fugitives before mentioned, and that the law of the State of New York passed May 6th, 1840, entitled "An act to extend the right of trial by jury," has been repealed. A full copy of said act of the Legislature of New York, as contained in the public prints, is herewith laid before you.

It will belong to the Legislature to decide whether the law that seems to have given offence to the Legislature of Virginia shall be repealed; but I trust it will not be deemed improper for me to state, that although I supposed the trial by jury was already effectually secured to persons claimed as fugitive slaves without the passage of the act in question, and therefore believed it unnecessary, yet I cheerfully deferred in that respect to the better judgment of the Legislature, and approved the law, the repeal of which is thus demanded. In my judgment the law could not now be repealed, and especially under the singular circumstances presented, without raising a presumption that the Legislature intended to deprive our own citizens, or other persons claimed as fugitive slaves, of the right of trial by jury. Believing that the right is invaluable as a protection to personal liberty, is peculiarly proper in cases where persons are exposed to the loss of liberty without even a charge of crime, and that it is important to every human being within our jurisdiction, in proportion to the humbleness and defencelessness of his condition, I cannot recommend the repeal of the act. If it became my place to speculate concerning the probabilities of legislative action, and if I supposed it possible, which I certainly do not, that

any disposition existed in the Legislature to repeal the act, I should deem it my duty to remonstrate against the measure.

Unwilling to leave any ground for an expectation in regard to the Executive of this State, that convictions of duty which have prevailed, notwithstanding the very elaborate arguments presented by the Executive and Legislature of Virginia, can be removed by any injurious measures adopted by that State, I deem it proper to repeat, in the most solemn manner, that the humble individuals who are pursued by the Governor of Virginia as felons, for the offence of being seamen on board a ship in which a negro secreted himself in order to escape from slavery, if they yet remain in this State, are under the protection of its Constitution and laws, and cannot be surrendered to the State of Virginia by Executive authority, on the pretence set up for that purpose, without a deliberate violation of both, and that this conviction, adopted after most mature and impartial deliberation, and strengthened by subsequent reflection, is in no degree affected by the recent proceedings of the authorities of Virginia.

Without intending any disrespect to the State of Virginia, and cheerfully leaving its authorities to adopt all such proceedings as may seem to them right and proper in regard to the subject, I avail myself of the occasion to declare that measures of retaliation, injury and reprisal, are deemed equally unworthy the dignity of this State and inconsistent with its federal relations. The Executive of this State, therefore, will not, although such a course has the sanction of the example of his Excellency the Governor of Virginia, offer large rewards to induce persons to seize within the jurisdiction and in violation of the laws of Virginia, fugitives from the justice of this State, requisitions for whose delivery to the authorities of this State have been denied by the Executive of Virginia, but will be content to put forth the legal powers with which he is in-

trusted. The Executive of this State will not appeal to supposed interests and sympathies in other States, and attempt to combine one portion of the Union against another, but will cheerfully abide for his cause the test of time and free investigation. The constitutional demands of the Executive of Virginia upon the Executive of this State will in all cases be allowed as fully as if the Governor of Virginia met his own obligations in the same manner, nor will measures of retaliatory legislation be recommended. On the contrary, the Executive of this State, confiding in the Constitution and laws of the United States as affording ample remedies for any injuries the citizens of this State may suffer from unconstitutional proceedings on the part of the State of Virginia, is satisfied that it may be safely left to the magnanimity of Virginia, and her own experience of the injurious consequences of those proceedings, to secure an early relinquishment of them and a due acknowledgment and performance of all her constitutional obligations.

WILLIAM H. SEWARD."

The Mississippi resolutions expressed the opinion that the refusal of the Governors of Maine and New York to surrender alleged fugitives from justice on the demand of the Executives of Georgia and Virginia respectively, was an "outrage on the chartered rights" of the latter states, and "a precedent full of danger to all the slaveholding States." [See note 11.]

March 26. To the Assembly: Transmitting resolutions adopted by the Legislature of Mississippi protesting against the protective tariff policy, declaring in favor of tariff for revenue only, and expressing the opinion that "no branch of domestic industry, and no description of domestic investment which is already profitable, needs special protection, and that none which is unprofitable deserves it."

April 6. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April 6th*, 1841.

It has become my painful duty to announce to the Legislature, the death of William Henry Harrison, the President of the United States.

Such an event would at any time be a national calamity. It is a trial through which our Constitution has never yet passed. But under the circumstances now attending the event, it cannot fail to be regarded as a fearful visitation of Divine Providence. The Chief Magistrate has been removed in the very commencement of his constitutional term of public service at a moment when he was preparing to meet the Congress of the United States at a session called in an extraordinary exigency of public affairs, and in a crisis which demands all the wisdom, firmness and patriotism of our rulers.

It becomes us as a People to humble ourselves before Him in whose hands are the destinies of the nations of the earth, to acknowledge the justice, although we cannot comprehend the wisdom of His Providence, and to implore Him that the favor and protection we have hitherto enjoyed may not now be withdrawn.

The Legislature will, it is presumed, adopt some form for the expression of the sympathy of the public authorities of this State with their fellow-citizens, and their respect for the deceased; although all must feel that public honors are as unavailing to assuage a Nation's grief as they are superfluous to perpetuate the wisdom and the virtue of the great and the good.[23]

WILLIAM H. SEWARD."

[23] A joint committee reported, and each House adopted, a series of resolutions on the President's death. A public memorial service was also held by the Legislature at St. Peter's Church, in Albany, on the 25th of April, with a sermon by Rev. Horatio Potter, D.D., rector of the church. A concurrent resolution was afterwards adopted thanking Dr. Potter for his sermon, and requesting a copy of it for publication.

April 14. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *April 14th*, 1841.

Since the date of my recent message concerning the requisition of the Lieutenant-Governor of Virginia for certain fugitives from justice a communication has been received from the honorable John M. Patton, Lieutenant-Governor of that Commonwealth. A copy of this document is herewith transmitted, together with a copy of my reply. [See note 11.]

WILLIAM H. SEWARD."

The following are the letters referred to in the Governor's message:

"EXECUTIVE DEPARTMENT,
RICHMOND, *March 22d*, 1841.

SIR.— The functions of the Executive of this Commonwealth having temporarily devolved on me, by the resignation of Governor Gilmer, it has become my duty to act upon the demand recently made by you upon the Governor of this Commonwealth, for the surrender of Robert F. Curry, charged with the crime of forgery in the State of New York.

The demand is in proper form, and the fact that he is charged with the commission of an act which is a crime by the laws of your State is duly authenticated.

Recognizing as I do the imperative obligation of the Constitution and laws which require the Governor of every State to surrender a fugitive from justice, upon the demand of the Governor of that State in which he is charged with the crime, I shall not hesitate about complying with the demand.[h] You are accordingly hereby informed that I have issued my warrant, as acting Governor of this Commonwealth, commanding the delivery of the said fugitive to John D. Dix, the agent appointed by you to receive and

[h] U. S. Const. art. 4, § 2, clause 2.

convey him to the State of New York. Mr. Dix having left here on his return to New York I enclose the warrant to you, and will forward a copy or duplicate of it to the proper authorities in Wheeling, where it is understood Curry is in custody.

The circumstances which have occurred in connection with this demand make it proper that in complying with it I should avail myself of the occasion to express to your Excellency the profound regret of this department for the course which the government of New York has pursued in relation to a similar demand made by the Executive of this State upon the Governor of New York, as long ago as the 25th of July, 1839, and which yet remains unsatisfied.

It is not my purpose or desire to renew a discussion (which indeed has been already exhausted) upon that subject. I cannot, however, refrain from reminding you of this unsatisfied requisition, or from expressing to you what is the universal sentiment of the people and government of this Commonwealth, that the refusal of New York to surrender the fugitives charged with the commission of a heinous crime against the laws of this State is a grievous and intolerable outrage upon her rights and a plain violation of the duty imposed upon the State of New York by the Constitution and laws of the United States.

This refusal to surrender fugitives from justice, upon the grounds on which it has been vindicated by your Excellency, and followed as it has been by an act of the General Assembly of New York, which seems to have been sedulously contrived to render it next to impossible to recapture a fugitive slave who shall escape to New York, involves an assault upon an institution of the southern States, deeply interwoven with their whole polity, and to any foreign interference with which they are keenly sensitive. It is not the less aggravating that the assault is made by directly violating or rendering nugatory two of the plainest and most explicit provisions of the Constitution of the United States.

In this state of things it is scarcely to be wondered at that some of our citizens, eminent in virtue and patriotism, should be inclined to regard New York as having placed herself out of the pale of the Union, and forfeited all right to have any claim made by her under the authority of the Constitution of the Union respected and complied with while she retains her present attitude of hostility to its obligations. While, however, a course of retaliation towards New York might be justified, as far as she is concerned, by her repeated and persevering disregard of her obligations, it is not deemed becoming the high character which it has been the desire of this State to deserve for good faith, respect for the Constitution and devotion to the Union, to retort even upon her an act involving a violation of constitutional duty. She has refused to comply with the Constitution. Virginia will scrupulously obey it. She has wantonly assailed our property by acts of Legislation endangering its safety and impairing its value. Virginia will again appeal to her justice, and entreating her to retrace her steps, in the meantime resort only to lawful and constitutional means of self-protection and redress. She has refused, and still refuses to surrender criminals who have fled from our justice, and is pursuing a course calculated to make the empire State an asylum for felons and runaway slaves. Virginia still respects and relies upon the Constitution and the laws, and will surrender fugitives from justice and fugitives from labor when lawfully demanded.[1]

I trust, sir, that you will see in this that we are ready to perform our duties, rather than quick to retaliate injuries, and that you will find in it an example of forbearance, and proof of an anxious desire to preserve harmony, and a sedulous regard for justice and good faith which will not be without benefit in inducing you and your great State to retract those assaults upon our institutions, of which the State of Virginia so justly complains.

[1] U. S. Const. art. 4, § 2, clauses 2, 3.

The motives and principles on which your demand is now unconditionally complied with by the Executive of this State, (in conformity, as I am happy to believe, with the almost unanimous concurrence of the Legislature,) ought to be regarded, as I hope it will be, as giving an earnest that as this State recognizes, in all their extent, and will perform, faithfully and scrupulously, all her duties and obligations under the Constitution of the Union, she expects and will insist upon every other State exhibiting an equal fidelity to its constitutional obligations.

It is in no spirit of menace, but from an anxious desire to preserve harmony between the States, and prevent collisions which must necessarily impair the value and stability of the Union, if they do not endanger and finally destroy it, that I assure your Excellency that the State of Virginia cannot acquiesce in, and will not submit to those aggressions of New York which have occasioned the existing controversy between those two great Commonwealths. I therefore accompany this communication, informing you of the fact that your demand for the surrender of the fugitive from your State is granted, with an earnest protest against those aggressions, and an anxious and respectful appeal to you, and through you to the State whose organ you are, to review the positions you have taken, and by a magnanimous abandonment of erroneous and untenable opinions and measures, restore those harmonious relations between the States which it is alike the interest and duty of us all to endeavor to perpetuate.

I have the honor to be,
Very respectfully,
Your ob't serv't,
JNO. M. PATTON.

To his Excellency,
WILLIAM H. SEWARD,
Governor of New York.

STATE OF NEW YORK.

EXECUTIVE DEPARTMENT,
ALBANY, *April 6th*, 1841.

SIR.— Your communication of the 22d of March last, enclosing a warrant for the surrender of Robert F. Curry, in compliance with my requisition, is acknowledged. The proper agent has been directed to receive the fugitive and convey him to this State.

Your compliance with this requisition is made, in your communication, a ground for asking a reversal of my decision upon a similar process of your predecessor, demanding the surrender of Peter Johnson and others. Although the candor you have avowed is by no means questioned, it is a matter of some surprise that you have treated the cases as altogether analogous. If you could have shown that the indictment accompanying my requisition was informal and defective in charging the crime of forgery; if a competent judicial tribunal had decided that the indictment was thus defective, and that upon examination there was no probable cause to believe the fugitive guilty of an offence against any law of this State, and if forgery were not a crime or offence against the laws of Virginia, the common law and the laws of all civilized countries, then, although the cases would be analogous, it would in my judgment, and with great deference, follow rather that the demand made by me ought to have been denied, than that the requisition issued by your predecessor ought to be granted.

Your views concerning the questions recently discussed between your predecessor and myself; your protest against supposed aggressions; and your appeal to me to review positions heretofore assumed, to abandon opinions and measures pronounced by you to be erroneous and untenable, and to restore harmonious relations between the States of New York and Virginia, have received most care-

ful and respectful consideration. Since however, you have intimated that it would be unprofitable to renew the discussion of the question referred to upon its merits my reply will necessarily be as general as your communication.

The Lieutenant-Governor of Virginia, in 1839, demanded of the Executive of this State, Peter Johnson, Edward Smith and Isaac Gansey, as fugitives, upon a vague and insufficient charge of stealing a negro slave in that Commonwealth. When this demand was made the Constitution had existed during a half of a century, a period sufficient it may be supposed to present domestic exigencies of every character foreseen and intended to be provided for by the framers of that instrument. During that period the institution of slavery existed in Virginia and some other States, while in this and others it was abolished. Yet within that long time only one case is known to have occurred in which the Executive of a slave-holding State demanded from a State in which slavery had ceased to exist the surrender of a fugitive upon a charge similar to that adopted by the Lieutenant-Governor of Virginia; and no case is known to have happened in which a demand of that character, made under such circumstances, was allowed. The affidavit was deemed by the Executive insufficient and defective, even to charge a crime against the laws of Virginia, while the question involved, if the requisition were supported by a proper charge, was regarded as one of grave importance, and requiring deliberate consideration. An informal note was delivered to the agent of Virginia, pointing out the defects in his papers and giving leave to amend, and a time was appointed for the consideration of the whole subject. In the meantime the supposed fugitives availed themselves of the legal remedy and were discharged on a writ of *habeas corpus*, on the grounds that the charge was insufficient, and that, upon examination, it was ascertained that the actual offence of the accused consisted in

their being seamen on board of a ship in which a slave had concealed himself, with a view to what proved an unsuccessful attempt to escape from servitude. The Lieutenant-Governor, to whom the circumstances became known, nevertheless, demanded a decision upon the case as originally presented. That course presented to the Executive of this State, on one hand, the alternative of seeming willing to evade a great constitutional question by placing his denial of the demand on the informal objection sustained by the judge, the removal of which would not dispose of the subject, and on the other, that of assuming the broad constitutional ground upon which, on mature reflection, he was satisfied the case must at last be decided. Both the frankness which becomes public functionaries, and a proper respect for the Lieutenant-Governor of Virginia, required the adoption of the latter alternative.

It was not unforeseen that an absolute and probably irreconcilable difference of opinion must arise between the Lieutenant-Governor and the Executive of this State. It was obvious that the former would assume, in conformity with opinions known to prevail in Virginia, that men of a certain race and condition may be, and are property and chattels, the subjects of purchase, sale, devise and theft. The Executive of this State, on the contrary, would be faithless to the spirit of its Constitution and laws, if he did not maintain that all men, of whatever race or condition, are men, and of right ought to be freemen; that every remedy for duress of a human being, whether it be the writ *de homine replegiando, habeas corpus,* action for enticement or false imprisonment, or indictment for kidnapping, regards him as man and not as property, and that it is as absurd in this State to speak of property in immortal beings, and consequently of stealing them, as it would be to discourse of a division of property in the common atmosphere. It was equally manifest that Virginia would

insist that her sister States should recognize the right of property of one class of her people in another as established by her laws. It would, on the contrary, become the duty of the Executive of this State to hold, that, except so far as the principle is controlled by the Article of the Constitution which declares that persons held to labor or service in one State, by the laws thereof, and escaping into another shall, on demand and proof, be delivered up to the persons to whom such labor or service is due, the relation of master and slave is a peculiar local relation of the State where it exists, and that this State is not bound to recognize or protect it in any manner, much less to protect it by extending for that purpose an Article of the Constitution which had no such design, nor any reference whatever to the relation.[1]

The Executive of this State, always careful to avoid even any seeming interference with the institutions or municipal affairs of other States, would have gladly avoided such a discussion, not from objections on his own part, but because he supposed the discussion, although invited by the Lieutenant-Governor, could not be agreeable to the people of Virginia. But it was the pleasure, nevertheless, of the Lieutenant-Governor of Virginia to demand an answer to the requisition, notwithstanding the decision would involve the great questions which have been raised, and notwithstanding he must have known, moreover, that a compliance with the requisition would be to surrender three men as criminals whom a competent tribunal had pronounced guiltless, and thus exhibit the Executive trampling on the judiciary as well as striking down the liberty of citizens of this State.

Such were the circumstances under which the Executive of this State denied the requisition of the Lieutenant-Governor, and assumed the grounds on which that denial has been vindicated. The decision was not, as you have as-

[1] U. S. Const. art. 4, § 2, clauses 2, 3.

sumed, designed as an aggression upon Virginia, and intended to affect her institutions. Virginia was admitted, in the broadest sense, to be sovereign within her territory, in the enactment and execution of her laws. It was denied only that she could extend her legislative power so as to give a right to the Executive of this State, or render it his duty to surrender its citizens to be transported to that Commonwealth to be tried, condemned and punished for acts not in themselves wrongful, nor regarded as criminal by the laws of this State; and inasmuch as differences might exist between the codes of the two States, it was conceded that in ascertaining the intent of the compact between them reference might be made, in such cases, not to the particular code of the one or the other, but to the common law received by both the laws of nations, and the laws of all civilized countries. These principles had no exclusive reference to the States in which slavery exists, but were the same by which other demands upon this State are tested, and they have been applied not only in the case in question but in others presented by Pennsylvania and New Hampshire, where that institution has long since become obsolete. The discussion was, moreover, conducted in a manner which it is hoped will be found to have been always courteous and respectful to Virginia.

The Governor of Virginia, in submitting the correspondence to the General Assembly, thought proper to distinguish the non-compliance of the Executive of this State, upon the grounds assumed by him, as a flagrant invasion of the rights of that Commonwealth, which, in the event of the failure of other remedies, might render it the solemn duty of Virginia to appeal from the cancelled obligations of the federal compact to original rights and the law of self-preservation. The Executive of this State laid the same correspondence before the Legislature, with the reluctant expression of his surprise and regret on account of the seeming menace of the Governor of Virginia. The Executive of

this State, desirous to avoid increasing the embarrassment which had resulted in consequence of the course adopted by the authorities of Virginia, declared that he regarded the subject as one falling peculiarly within the province of the Executive Department, and in relation to which the duties of that department were prescribed by the Constitution and laws of the United States, and not by the Constitution or laws of this State, and he carefully abstained from invoking any legislative sanction of his decision. The executive of this State subsequently complied, promptly and cheerfully, with the request of the General Assembly of Virginia and submitted the appeal of that body from the Executive to the Legislature of this State, together with the able arguments of the Governor of Virginia and of a committee of its House of Delegates, all of which documents were laid before the Legislature without comment. The executive also, with equal cheerfulness, complied with the further request of the General Assembly of Virginia by reviewing the positions assumed by him, and he trusts performed that duty in a spirit of candor and courtesy. The correspondence being thus again closed, the Governor of that State submitted it to the General Assembly in the manner he deemed proper. He at the same time offered large pecuniary rewards to induce individuals who might thus be tempted to seize, within the jurisdiction of New York and in violation of its laws, and convey to Virginia the three individuals, whose security was doubly assured to them, first by the decision of a competent legal tribunal, and then by the executive authority of the State. The Governor of Virginia also addressed public circular letters to such, and such only, of the American States as he assumed had peculiar sympathies with Virginia, inviting them to make common cause against New York. The Executive of this State submitted these proceedings and the correspondence to the Legislature of New York without remark. The General Assembly of Virginia then thought proper to pass an

act attempting to impose invidious restrictions and onerous impositions upon citizens of this State engaged in commerce with that Commonwealth, citizens no otherwise responsible for the action of the government than as being among its constituents; and this was done with a purpose fully avowed to oblige the Executive of this State to rescind a decision made under his constitutional responsibilities, and to compel the Legislature of New York to repeal a law found on its statute book, in accordance with its Constitution and the Constitution of the United States, and having no connection with the question in controversy. Simultaneously with this proceeding the Governor of Virginia refused compliance with a requisition, admitted to be in due form, for the surrender of a fugitive charged with the crime of forgery, unless the Executive of this State would first rescind the decision previously made by him, allowing, however, to the Executive of this State six months as a reasonable period to decide upon the extraordinary proposition thus submitted. The Executive of this State lost no time in assuring the authorities of Virginia that the original subject had been reconsidered upon its merits, and also in connection with those injurious and retaliatory proceedings, and submitted the result, that the decision having been made in accordance with convictions of constitutional duty still entertained, he found no sufficient ground for a reversal of the same. It became the duty of the Executive to communicate these proceedings of Virginia to the Legislature of this State. In doing so he could not but foresee that no one would think of repealing, and especially under such circumstances, a law of the State designed for the protection and security of its own citizens and others exposed to the risk of privation of liberty without even a charge of crime. There is no good reason to believe that the interests of the citizens of this State are less carefully regarded by its Legislature, than the supposed interests of citizens of Virginia are by the General Assembly of that Common-

wealth. There is no ground to suppose that the principles in regard to personal liberty and State sovereignty maintained by the Executive of this State, are less sedulously cherished by the Legislature than the institution of slavery is by the General Assembly of our Sister State. When the commercial position, condition and relations of this State are considered, it is not unreasonable to suppose that the Legislature, if it could transcend its constitutional barriers, might annoy, harrass and even oppress unoffending citizens of Virginia at least as severely as the General Assembly of that Commonwealth can oppress such citizens of New York. Nevertheless the Executive declared that he deemed any retaliatory action unworthy the dignity and inconsistent with the relations of this State. He recommended no such measure. He declared that none should be adopted on his part; and assuming that the citizens of this State have ample constitutional remedies against any injuries they may suffer from the wrongful legislation of Virginia, he declared his confident conviction that it might safely be left to the magnanimity of that State and her own experience of the consequences of her measures to induce an abandonment of them and the performance of her constitutional obligations. The Executive of this State has sincere pleasure in acknowledging that so far as one of the measures is concerned, this anticipation has been already realized.

From this cursory review, rather of what has been done than of what has been written, it will appear that the authorities of New York have not been the actors in any transaction tending towards a derangement of the relations between this State and Virginia. New York has done nothing, and has spoken only when and so often as she was appealed to by Virginia, and then always in the language of respect and affection. New York has made no novel or questionable demands, complained of no wrongs, offered no rewards for violations of laws of Virginia, passed no vindictive acts, made no menaces, nor has

she endeavored, in any manner, to excite her sister States against Virginia, although she doubts not there are many and enlightened States among them which cherish her own principles and respect her decision.

I trust, therefore, sir, that you will be satisfied that the spirit of conciliation, kindness and devotedness to the Union which you have so properly invoked, will continue to prevail here, since no other spirit has been indulged from the beginning. You have a guaranty also of that spirit in the fact that, although not loud and frequent in professions, New York is constant in works showing her attachment to the Union. Her history presents no instance in which she has questioned its value, nor has she ever indulged speculations concerning that after state which sometimes engages the contemplation of those whose estimate of the value of the Union is not fully settled. You have a guaranty also in the perseverance with which New York pursues her policy of increasing her communications with her sister States, and the determination she manifests to render equal justice to them all, while she protects her own citizens as she ought upon principles essential to her own sovereignty and that of her sister States.

I trust, also, you will agree with me that it rests with Virginia to restore harmony between herself and New York, if indeed that harmony has been impaired, which New York is not yet prepared to admit. New York maintains, with regard to Virginia, the same attitude and relations now as heretofore. She concedes to Virginia all she has ever yielded. She asks of her nothing which Virginia does not herself admit to be constitutional and just, and she maintains towards her the same attitude and relations that she maintains towards the other States of the confederacy. If, however, it be not the pleasure of Virginia to retain her ancient attitude and cherish her ancient feelings towards New York, I can only express my unavailing regret for a circumstance so unhappy and unfortunate.

You are pleased to remark that this State, is pursuing a course calculated to render her territory an asylum for felons and runaway slaves. Waiving all exceptions to the spirit of this remark, I trust I may be permitted to reply, first, that it is not inconsistent with the most careful regard to the public morals to grant impunity to those declared innocent by the legal tribunals or to those whose conviction would involve no offence against the laws necessary for the preservation of a well-ordered society, and no violation of abstract rights, as ascertained from the system of jurisprudence established in civilized nations; and secondly, that the experience of the people of this State has proved, at least to their own satisfaction, that neither public virtue nor public prosperity has received any injury from extending, so far as has yet been done, equal justice to every class and every race of men within our limits.

Accept the assurance of high respect,

With which I remain,

Your obedient servant,

WILLIAM H. SEWARD.

The Honorable,
JOHN M. PATTON,
Lieutenant and acting Governor
of Virginia,
or his successor in office.

April 20. To the Senate:

Presenting complaints against the judges of the county court of Madison County.

It was charged that the judges had negligently and unlawfully admitted to citizenship forty aliens without sufficient proof that they had, as required by the federal statutes, declared their intention to become citizens, or were otherwise entitled to naturalization. Governor Seward's communication contained a detailed statement of the facts,

but while he apparently thought the charges had been sustained, he did not recommend a removal.

He observed that the power of removal "ought not to be exercised so frequently as to shake the independence of the judiciary. Under all the circumstances, I am of opinion that the exposure of the proceedings of the judges, in the present case will be sufficient to induce a correction of the practices complained of, and prevent an imitation of them by other courts." "To guard against misconstruction, it is proper to say, that I am not to be understood as maintaining the wisdom or expediency of the provision requiring a declaration by foreigners of their intention to become citizens, to be made two years before applying for admission. In conformity with principles heretofore often published, I am of opinion that it would be wise to remove this and other obstructions to naturalization, and believe it would be better for the permanent interests of the country to confer the right of suffrage upon all who ask it, and who have not rendered themselves unworthy of it by crime, after a period of residence less than that prescribed by the naturalization laws."

April 30. To the Senate: Transmitting resolutions adopted by the Legislature of Massachusetts, protesting against the cession of public lands to the States in which they were situated, and recommending a distribution of the proceeds among the states; also favoring a protective tariff policy, the ineligibility of the president to a second term, and a uniform date for the choice of presidential electors; and recommending an early settlement of the controversy relating to the northeastern boundary of the State of Maine.

April 30. To the Senate: Transmitting resolutions adopted by the Legislature of Maryland, declaring the right of each state to define felony or crime within its jurisdiction, which definitions should be binding on every other state.

May 3. To the Assembly: Transmitting a communication from Theodore S. Foxton, one of the commissioners for the erection of the State Lunatic Asylum at Utica, expressing the opinion that the institution would be ready for occupancy by the first of the following November, and suggesting that a board of trustees be organized for the purpose of conducting its affairs. [See note 4.]

May 7. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *May 7th*, 1841.

"The memorial herewith transmitted, concerning the grievances of mechanics in consequence of the manufacturing operations carried on in the State Prisons, has been submitted to me with a request on the part of the petitioners that I would lay the same before the Legislature. I cheerfully comply with that request.

I have had occasion to express the opinion that the employment of the convicts in the occupations pursued in the prisons as it has hitherto been conducted, is injurious to the interests of those of our fellow citizens engaged in similar pursuits. At the same time there can be no doubt that it would not be wise or humane to depart from our system of combining hard labor with imprisonment and proper discipline in our penitentiaries. It appears to me, however, and is a very prevalent opinion, that no test has been made of the experiment whether manufacturing operations cannot be introduced into the prisons, differing from many now carried on there, and which would not conflict with the interests of any portions of our fellow citizens. To maintain the converse is to assume that far the largest number of manufacturing branches, and many of those which are the most important and lucrative in other countries, cannot flourish among us. Certainly there is no ground for such an assumption. On the contrary, with the increase of capital and labor, and almost

without the aid of protecting duties, we are continually, although not rapidly, enlarging the scale of our manufacturing operations. When the cheapness of labor and other facilities in the State Prisons are considered, it cannot be doubted that a system which operates injuriously by competition upon mechanical pursuits now carried on in the State, might be made useful in introducing those in which our fellow-citizens have not yet found sufficient inducements to engage. History shows that in almost every country in Europe new branches of agricultural and mechanical industry have required and received favor and encouragement from the government. This State can give such encouragement, to some extent, in the manner indicated, and certainly none ought to lament that when any new branch of business has been rendered profitable in the prison, our fellow citizens will engage in it.

If such an experiment could be successful, it is manifest that the public welfare would be promoted, inasmuch as we should be relieved, in some measure, from dependence upon foreign manufacturers. At the same time it is certain that any abrupt and general change of the occupations of the convict would be followed by very injurious consequences. Such an immediate change, however, is not, I believe, contemplated or desired. Upon consultation with the present agents of the prisons, I find reason to believe that some branches of the manufacture of silk might be successfully introduced, and that there are many descriptions of manufactures not now carried on in this State which might be made profitable in the prisons. The prisoners are now maintained without aid from the Treasury, and probably no more favorable state of circumstances will occur. I submit, therefore, whether it may not be proper to provide effectually for enforcing existing laws and to require the agents of the prisons to introduce from time to time other kinds of labor as far and as fast as they can do so without violating existing contracts.

Such a course would avoid all danger of reducing the revenues of the prisons below the sum necessary for their support, and at the same time the question so interesting to the memorialists and the public at large, may be safely tested, and the result made known from time to time to future legislatures. I forbear, however, from entering into the discussion of the subject, because it has already engaged the attention of the Legislature. [See note 15.]

WILLIAM H. SEWARD."

May 15. To the Senate: Transmitting a communication from John Rutherford, Lieutenant and Acting Governor of Virginia, relative to the demand of Virginia for the surrender of Johnson, and others, alleged fugitives from justice. [See Special Messages of March 26, and April 14, and Senate Document No. 94. See note 11.]

May 19. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *May* 19, 1841.

"In compliance with a resolution of the Honorable the Assembly, I communicate a copy of all the correspondence which has taken place between this department and the Executive authorities of the United States, concerning Alexander McLeod.

I have the honor, also, to inform the Assembly, that no arrangement whatever, of any kind, or for any purpose, has been entered into by this department with the Executive of the United States concerning that individual.

The Assembly is further informed, that the prisoner is now before the supreme court of this State on a writ of *habeas corpus*, sued out, as is understood, by himself, with a view to his discharge from custody. This department has no knowledge or information concerning the application for said writ, the issuing of the same, or the action of the court, except such as has been obtained from the

public newspapers, and is presumed to be in the possession of the Assembly. The proceeding first became known to this department when the prisoner passed through this city, on his way to the city of New York, in custody of the sheriff, in obedience to the writ of *habeas corpus*. The Attorney General of this State was thereupon immediately instructed to resist the motion for a discharge of the prisoner, and at the same time the President of the United States was respectfully informed that the appearance of the District Attorney of the United States as counsel for the prisoner was deemed incongruous with his official duties, and injurious to this State. The Attorney General is now engaged in the discharge of the duty assigned him.

An incidental correspondence on the subject of the imprisonment of Alexander McLeod having arisen between his Excellency the Governor of the Canadas and the Executive of this State, a copy of the same is also laid before the Assembly.

The Assembly is respectfully assured, that under no circumstances will any arrangement or proceedings be entered into, or permitted, with the consent of this department, the effect of which might be to compromit, in the least degree, the rights, dignity, or honor of this State.

WILLIAM H. SEWARD."

McLeod was a British subject, and a deputy sheriff of the Niagara district in the Province of Upper Canada. He was arrested at Lewiston in the State of New York on a charge of murder and arson in connection with the destruction of the steamboat Caroline, and was indicted and confined in the Lockport jail. The Governor's communication referred to *habeas corpus* proceedings instituted for the purpose of inquiring into the validity of McLeod's detention and of procuring his release. [See Assembly Document, No. 292.]

May 26. The Legislature adjourned without day.

WILLIAM H. SEWARD, Governor.

ANNUAL MESSAGE.

FELLOW CITIZENS OF THE SENATE AND ASSEMBLY.—The inhabitants of this State have been permitted again to till the earth in peace, and gather its fruits with gladness. Industry has enlivened our towns, and health has cheered our dwellings. Benevolence has been assiduous in all its interesting offices, and eminently successful in diminishing intemperance, the chief source of suffering and vice. Learning has imparted its instructions, and religion has diffused more widely than ever its renewing and consoling influences. With such distinguished blessings has the Divine goodness crowned the year, although its seasons, as they passed, were shadowed by accidents, on land and water, fearfully destructive of human life; by apprehensions of want; the terrors of mysterious crime; alarms of war; rumors of conspiracy and popular commotion; and the death of a revered Chief Magistrate, amid the rejoicings which attended his accession. It becomes us, therefore, to commence our deliberations for the public good, with humble acknowledgments of dependence on the Most High, and fervent supplications that he will be pleased to vouchsafe to our country a continuance of the Divine protection and favor.

The duties of the several departments of the administration have been performed with diligence. The new State Hall has been completed, and is no unfit monument of the prosperous condition of the State. I respectfully suggest that engineers and architects should now be required to deposit in the public archives their plans, estimates, maps and models of canals, railroads and public edifices.

The asylum for the Insane is ready for the reception of those who are to be its inmates, and it devolves upon you to prescribe the management of the institution. While your sedulous care will overlook none of that unhappy class, prudence, justice and humanity recommend that persons acquitted of crimes on the ground of mental aberration, should be brought under sanitary discipline.[1]

The Geologists are engaged in arranging our extensive cabinet, and in publishing their final reports. The sum of one hundred and four thousand dollars, in four equal annual payments, was appropriated for the survey. Its prolongation another year, by a law passed in 1840, renders it necessary to replenish the fund.[2]

The Journals of the Provincial Congress have been printed in pursuance of a resolution of the Legislature; and the volumes will be found to contain abundant memorials of the virtues and sacrifices of our ancestors.

The government of the Netherlands has opened its archives to our researches with such liberality and kindness as will increase our affectionate veneration for the people to whom the State traces its origin. Great Britain has received our application with less favor. The history of the American Colonies is, at least, no unworthy episode in that of England, and its interest will increase with the lapse of time. We cannot illustrate the character of our ancestors without illuminating the principles of English liberty, and the genius and virtues of Englishmen. The President of the United States has, at my request, instructed our Minister to renew the application.[3]

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1 The organization and administration of the state lunatic asylum were provided for by chapter 135, passed April 7.

2 See special message of March 14. Chapter 149, passed April 9, provided for continuing work on the geological survey until January 1, 1843, and appropriated $26,000 for expenses.

3 See special messages of March 25, and April 1.

Chapter 159, passed April 11, made an additional appropriation of $3,000 for the expenses of the agent appointed to procure and transcribe colonial documents in Europe.

The resolutions proposing amendments of the Constitution, having been published, invite your reconsideration in that spirit of candor, concession and patriotism which ought especially to prevail in changing fundamental laws. If the amendments shall be found suitable to promote a more efficient administration of justice, they will be hailed with much satisfaction by the people.[4]

I lay before you a law of Virginia, calculated to embarrass our commerce. The effect of the act is postponed until May next, and the Governor is authorized further to suspend it whenever the executive authority of this State shall surrender three persons heretofore demanded by the Lieutenant-Governor of that Commonwealth as fugitives from justice, and the Legislature shall repeal the law extending the trial by jury. I have respectfully informed the authorities of Virginia, that my convictions of the illegality of that requisition are unchanged; and that although New York, from motives of self respect and devotion to the Union, will not retaliate, nor even remonstrate, yet she cannot consent to remain a respondent, since Virginia has seen fit to transcend the sphere assigned her by the Federal Constitution, and to pass an aggressive law; but that this State will cheerfully return to a discussion of the subject, with a sincere desire to arrive at a conclusion mutually satisfactory and conducive to the general harmony, whenever the effect of that unfortunate statute shall be removed by the action of our sister State, or by an overruling decision of the Supreme Court of the United States. The Legislature will decide whether the trial by jury shall be relinquished, and whether a State, which acknowledges no natural inequality of men, and no political inequality which may not ultimately be removed, shall wrest that precious shield from those only, whose freedom is assailed, not for any wrong doing of their own, but

[4] The amendment of 1841, proposing a new judiciary article was not adopted by the Legislature in 1842.

because the greatest of all crimes was committed against their ancestors. Taught as we have been by the founders of the Constitution, and most emphatically by the statesmen of Virginia, we cannot renounce the principle that all men are born free and equal, nor any of its legitimate consequences. But we can, nevertheless, give to Virginia, and to the whole American family, pledges of peace, affection and fidelity to the Union, by relying upon legal redress alone, and by waiting the returning magnanimity of a State whose early and self sacrificing vindication of the rights of man has entitled her to enduring veneration and gratitude.[5]

I submit, also, for your information, a correspondence between the Governor of Georgia and myself, which my respected contemporary has made a subject of some comment in communications to the Legislature of that State.[6]

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[5] As to the Virginia controversy see special messages of January 8, February 11, 23, and April 9 and 12.

The Senate passed a bill repealing the act of 1840, chap. 225, which extended the right of trial by jury to cases involving the detention of fugitives from service. The Assembly did not pass the bill.

The Legislature adopted the following concurrent resolutions relative to the status of slaves:

"Whereas the Governor of this State has refused to deliver up, upon the demand of executive authority of Virginia, Peter Johnson, Edward Smith and Isaac Gansey, alleged fugitives from justice, charged with the crime of theft, viz: stealing a slave within the jurisdiction and against the laws of Virginia; And whereas the Governor has assigned as the reason for such refusal, that the stealing of a slave within the jursidiction and against the laws of Virginia, is not a felony or other crime within the meaning of the second section of the fourth article of the constitution of the United States:

"Resolved, That in the opinion of this Legislature, stealing a slave within the jurisdiction and against the laws of Virginia is a crime within the meaning of the second section of the fourth article of the constitution of the United States.

"Resolved, That the Governor be requested to transmit the foregoing preamble and resolution to the executive department of Virginia."

These resolutions were considered and discussed by Governor Seward in the special message of April 12.

[6] The correspondence between Governor Seward and Governor Charles J. McDonald of Georgia, is given in Senate and Assembly Document No. 2. The Governor of Georgia made a requisition on Governor Seward for the surrender of an alleged fugitive from justice, who was charged with the

Nineteen associations under the General Banking law, and five Safety Fund institutions, have been closed. I recommend that measures be adopted to replenish the Bank Fund without delay, and that it be exempted from liability for private deposits. To guard hereafter, against fraudulent excesses of circulation, I suggest that the safety Fund institutions may be required to receive their circulating notes from the Bank Commissioners, or the Comptroller. While I cannot doubt that you will adopt these or more suitable measures to sustain the currency and correct abuses in banking, I am sure that no harsh or injurious spirit will be indulged towards institutions which, deriving their powers from public grants, have performed their

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crime of larceny in the state of Georgia. The crime was set forth in two affidavits, one of which alleged the stealing of several articles of personal property valued at $50, and the other the stealing of a negro woman, a slave, valued at $50. Governor Seward declined to grant the requisition on the ground that the affidavits were insufficient, for the reason that they did not set forth the facts and circumstances alleged for the basis of the crime, and from which it might be determined that a crime had actually been committed.

The governor of Georgia contended that the affidavits were sufficient to warrant an arrest in Georgia, and should therefore be deemed sufficient on a requisition. No indictment accompanied the requisition but an indictment was afterwards obtained, and sent to Governor Seward charging the alleged fugitive with the crime of larceny in stealing the negro woman, a slave. The indictment did not cover ordinary articles of personal property as stated in the affidavit.

Governor Seward declined to grant the requisition on this indictment, on the ground that it did not charge that Alanson Greenman, the alleged fugitive, stole a slave with intent to convert her to his own use, but the Governor suggested that he would grant a requisition, if the charge were specifically made that the negro had been kidnapped, regarding the crime of kidnapping as not affected by questions relating to the status of the individual as a slave. From a letter written by Governor Seward to the Governor of Georgia, dated December 27, 1841, it seems that Georgia's claim was finally reduced to the stealing of a slave, kidnapping and the larceny of personal property having been abandoned. Governor Seward said this situation made the requisition similar to that of Virginia in the case of Peter Johnson and others, which had already been determined by him. He therefore declined to grant the requisition without further explanation "to show that there was a taking of the slave with a felonious intent to convert her into property by the offender."

trusts with general fidelity, and whose stability is intimately connected with the public interests and the general welfare.[7]

More than an hundred years ago, the Legislature solemnly denounced a forcible seizure of the lands of the Six Nations, as an act that would be not merely unjust, but perfidious and ungrateful to time honored and faithful allies. The lapse of time has wonderfully changed the condition and relations of the parties, but it has not diminished the sanctions of justice, nor weakened the motives of philanthropy. I invite your attention, therefore, to the allegation of the survivors of that heroic and unfortunate people, that the late treaty by which they surrendered the remnant of their lands, under the sanction of the Government of the United States, was procured by circumvention and fraud.[8]

It is supposed that in reorganizing the congressional districts, you will, as far as possible, adopt the principle that representation is most perfect where the districts are not only equal, but as numerous as the delegates; and it is confidently expected by our fellow citizens, that you will divide large towns and wards into convenient districts, and direct that the annual elections shall hereafter be held on one and the same day throughout the State.[9]

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7 The Governor's suggestions as to banks were embodied in chapter 247, passed April 12, "to provide for the prompt redemption of the circulating notes of insolvent safety fund banks; to restrict the liability of the safety fund, and for other purposes."

8 A Senate committee which had the subject of Indian treaties under consideration presented a report and resolutions recommending that if a council were held by the Seneca Nation of Indians for the purpose of considering the subject of a sale of their remaining lands to the State, the chairman of the Senate committee on Indian affairs, should attend for the purpose of advising the Indians as might be necessary or proper.

9 Chapter 325, passed September 6, at the adjourned session, divided the State into 34 congressional districts, substantially in accordance with Governor Seward's suggestions.

The Legislature adopted concurrent resolutions at the August session, with a preamble reciting that under the act of Congress, representatives should be chosen by districts composed of contiguous territory, no one district

According to reports received at the State Department, there have been four hundred and ninety-seven convictions of felonies, including six capital cases, and about four thousand convictions of misdemeanors and minor offences, showing an increase of felonies by fifty-seven, and of inferior violations of law in a greater proportion. The reformation of offenders has been steadily kept in view in the discipline of the prisons, and no complaint of inhumanity has reached me. The fiscal condition of those penitentiaries is satisfactory; but the employment of the convicts in departments of mechanical industry which bring their fabrics into competition with those of citizens, is a subject of complaint so general and so just, that I am constrained to commend it to your earnest consideration.[10]

Every philanthropic mind will cling to the hope, that ultimately, the supremacy of the laws may be maintained, without exacting, in any case, a forfeiture of life. Nevertheless, the subject requires most cautious deliberation. The substitution of imprisonment for life would be signally unsuccessful, without such a modification of the pardoning power as might prevent its being employed except in cases where it would seem to be necessary to correct error. One hundred and ninety-seven persons have been consigned for life to the State prisons within the last twenty-five years, all of whom were pardoned after terms averaging five years and

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electing more than one representative. The resolutions then declared that this was an unwarrantable interference in a matter peculiarly of state concern, and a violation of the spirit of the Constitution. It was also declared to be an invasion of the rights of the States "each of which ought to be left, in its own independent judgment, to prescribe such regulations for the choice of its representatives as may be dictated by the wishes and convenience of its own citizens." The Legislature by the same resolutions recommended the reconsideration and adoption of an amendment proposed by New York when the Constitution was ratified, reserving to the States the power to determine places and manner of holding elections for representatives in Congress, leaving to Congress the power to determine only the question of the time of election.

[10] Chapter 148, passed April 9, contained regulations concerning convict labor, intended to restrict competition with outside labor.

two months, except those who escaped, thirty-two who died, of whom twenty-four did not reach that average period, and twenty-two now in prison, of whom fourteen have not yet been confined so long a term. The average of limited sentences is four years and eight months.[11]

Although more than four thousand persons are annually confined in our county jails, those penitentiaries often exhibit scenes revolting to humanity; and many youthful prisoner, instead of being subjected to salutary discipline, becomes more depraved. I indulge a hope that this interesting subject, so often fruitlessly submitted to the Legislature, will receive your enlightened consideration.

The administration of justice has encountered many and novel difficulties. The sheriff of Albany has been obliged to call forth the armed power of his county in executing civil process; Executive interposition has been invoked to suppress riotous disturbances in the counties of Rensselaer and Schenectady; unremitted efforts have failed to bring to light the perpetrators of an appalling crime in the vicinity of the city of New York; and high offenders, who had maintained respectable relations, have escaped, in some instances, after arrest. These incidents suggest inquiries whether the efficiency of the police might not be improved, and whether the number of magistrates authorized to accept bail and discharge on *habeas corpus*, has not been improvidently enlarged. A subject of Great Britain who, for several years, pursued a desperate enterprise of bringing on a border warfare, by crimes which caused him to be proscribed in both countries, was, with extraordinary efforts, and after irritating delays, brought to justice.

The detention of another British subject, who, having come voluntarily into the county of Niagara, was held to answer an indictment for a murder committed at Schlosser in 1837, was made a cause of complaint by the British min-

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11 See ante p. 863, note 8, for the report of an Assembly committee on capital punishment.

ister to the President of the United States, on the ground that the aggression was an act of public force committed under authority of Her Majesty's Government. The then President having decided that the subject belonged to the judicial jurisdiction of this State, and that his interposition was not required by any principle of reason, justice or international law, and having communicated that decision to me, I expressed my acquiescence and assured him that the supposed offender should be brought to trial and have a legal acquittal if innocent, and suffer just punishment if guilty of so aggravated a crime. The Government of Great Britain soon afterwards formally avowed the aggression, and reiterated the demand for the discharge of the accused. The late Executive of the United States, on this new and more formal presentation of the case, conceded that, according to the laws of nations, the prisoner could not be held responsible for his supposed participation in the aggression. The President further declared, that he would direct the prosecution to be discontinued, if it were pending in a Federal court, and intimated to me, that if for want of power or other cause, I should decline to enter a *nolle prosequi,* the General Government would provide counsel for the accused, and suggest a removal of the proceedings into the Supreme Court at Washington, if a conviction should occur. These views were also adopted by the present Chief Magistrate of the United States. After due consideration I informed the President that now, as before, the subject seemed to me to belong to the judicial tribunals of this State, and submitted that their proceedings ought not to be embarrassed by any interposition either of the Federal or State authorities. The accused appeared on *habeas corpus* before the Supreme Court and challenged its jurisdiction, upon the grounds maintained by Great Britain and conceded by the Executive of the United States; but the plea was overruled, and the prisoner having been remanded, was tried in Oneida county in September

last, and having proved an alibi, was acquitted. Interesting as a capital trial, especially necessary to maintain the dignity of the State, the case acquired additional importance from the grave questions of constitutional and international law which it involved. It became a subject of legislative debate in London and Washington, as well as in our own Capitol, and popular feeling was intensely stimulated on both sides of the Atlantic. Thus a trial for felony seemed likely to involve in war, two enlightened Christian nations, which had every motive to perpetuate peace and friendship. Agents of the Canadian authorities, and credulous persons among ourselves, alarmed the National Executive and the Representative of the British Government, with reports of imaginary conspiracies to convict the accused by perjured testimony, and to render war inevitable by his assassination in prison. During these proceedings my action was guided by a desire to maintain — but not without proper deference to the Government of the United States — the judicial jurisdiction of this State — to conduct the prosecution with energy, but with fairness towards the accused — to preserve order, and not merely to prevent any unlawful violence against the prisoner, but also to manifest a jealous care of the public honor in that respect — to sustain the Government of the United States in demanding redress for the aggression at Schlosser as a national indignity, and to cooperate in the execution of all necessary measures for public defence. The papers now submitted, together with those already before the Legislature, will furnish a full history of these interesting events. Your authority is necessary for paying some expenses for which no provision was found in existing laws.[12]

[12] The Governor here refers to the case of Alexander McLeod. The correspondence and other papers concerning the case may be found in Senate Document No. 2, and Assembly Document No. 2, 1842.

Chapter 271, passed April 12, made an appropriation for the expenses incurred by the sheriff of Oneida county in the trial, safe keeping and safe conducting of McLeod, and also for the sheriff's personal services.

New York, like her sister States, and not less assiduously than they, pursues a policy of material improvement, commercial enterprise and virtuous refinement, to ameliorate her social condition and recommend republican institutions to the favor of mankind. She deprecates war, therefore; and especially would she avoid incurring its calamities, for objects or from motives peculiar to herself. But recent occurrences admonish us, that pacific interests and dispositions are not always a guaranty of safety and peace. Although the American government rigidly observes neutrality, and especially so where British interests are involved, yet this is far from satisfying a distant monarchy that retains provincial Colonies under the shadow of our republican institutions. It has not been enough that a military force was maintained to prevent our citizens from furnishing aid and supplies to discontented subjects of those colonies, but the irrepressible sympathies of a free people have manifestly given offence. Although the misguided Americans who joined the standard of Canadian insurrection, were abandoned to the vengeance they provoked, yet the Government of Great Britain denies our right to try its subjects, who, having in time of peace committed crimes in this State, afterwards come voluntarily within our jurisdiction. It is not enough that in such cases we award justice according to the principles, and in the forms of English jurisprudence, but we are expected to vary our constitutional distribution of judicial powers. We have experienced the inequality of diplomacy between a peace-loving and defenceless nation, and one that is belligerent and every where prepared for conflict; and it is to be hoped, that hereafter, and at least so long as questions affecting the integrity of our territory, the inviolability of our flag and the honor of our country remain unadjusted, the Government of the United States will steadily persevere in the defensive policy it has so vigorously commenced. Having represented to the President, that the British Government

had established a naval armament upon the lakes adjoining this State, sufficient to sweep our unprotected commerce from those waters, I have much satisfaction in acknowledging the promptness with which he directed the adoption of an adequate system of defence.[13]

It is a gratifying indication of the patriotism of our citizens, that notwithstanding the diminution of the penalties for omissions of military duty, the efficient militia force has not materially decreased, while a just impatience for a reform of the system is every where expressed.

Agricultural associations have been formed under the auspices of the State Agricultural Society and the patronage of the Legislature, in the counties of Albany, Cayuga, Columbia, Cortland, Delaware, Dutchess, Genesee, Greene, Jefferson, Kings, Livingston, Madison, Montgomery, Niagara, Oneida, Onondaga, Orleans, Otsego, Rensselaer, Saratoga, Seneca, St. Lawrence, Suffolk, Tioga, Tompkins, Washington, Wayne, Yates, Monroe, Orange, and Fulton and Hamilton; and I commend to your favorable consideration the appeals that will be made for more liberal encouragement of the arts of husbandry.

The praiseworthy efforts of the agent of the State Prison at Auburn to introduce the manufacture of silk in the work houses of that institution have not been altogether unsuccessful. Citizens in the counties of Monroe, Genesee, Tompkins, Cayuga, Jefferson, Dutchess, Tioga, Wyoming, Niagara, Suffolk, Otsego, Orange, Lewis, Erie and Yates have responded to the desire of the Legislature to engraft the production of silk upon our agriculture, and the sum of nine hundred and sixty-four dollars has been paid by way of bounty for that object. It is worthy of remark, that this very productive branch of industry has never flourished in any country without first enjoying some such especial

[13] Chapters 57, passed February 28, and 316, passed April 12, ceded to the United States jurisdiction over land at Black Rock which might be needed for military purposes.

favor. England was repaid (by the introduction of the silk manufacture) for religious tolerance towards exiled French artisans; France acquired it by munificent patronage of Italian manufactures; and China received from Italy a large tribute until the culture in the latter country became an object of imperial protection. The necessity for revising the revenue laws occurs under circumstances so propitious to the establishment of a system which would not only encourage this important object, but which would also stimulate agriculture generally and revive the manufacturing interests, that I hope you may think it proper to instruct our Representatives in Congress concerning the views and wishes of the people of this State on that deeply interesting question.

The Literature Fund, devoted to the improvement of the higher branches of learning in colleges and academies, has a capital of $268,990, and including what is received from the United States deposits, an income of $47,165. The value of the endowments of our colleges and academies is $2,175,731. The productive capital of the Common School Fund, is $2,036,625, and its whole income is $261,073. If we should include lands valued at $200,000, and so much of the United States Deposit moneys as yield revenue to this fund, its value would be $5,819,959. There are 10,886 school district libraries, containing 630,000 volumes. The whole capital permanently invested for the support of education, including the two funds, the endowments of colleges and the value of school edifices, is ten and an half millions of dollars. There is a happy contrast between this munificent foundation, and a resolution of the Colonial Assembly not long before the Revolution, declaring that a report that they intended to levy by tax five hundred pounds, to be expended in the promotion of learning, was groundless, false and malicious.

It was among my earliest duties to bring to the notice of the Legislature the neglected condition of many thousand

children, including a very large proportion of those of immigrant parentage in our great commercial city; a misfortune then supposed to result from groundless prejudices and omissions of parental duty. Especially desirous at the same time not to disturb in any manner the public schools which seemed to be efficiently conducted, although so many for whom they were established were unwilling to receive their instructions, I suggested, as I thought, in a spirit not inharmonious with our civil and religious institutions, that if necessary, it might be expedient to bring those so excluded from such privileges into schools rendered especially attractive by the sympathies of those to whom the task of instruction should be confided. It has since been discovered that the magnitude of the evil was not fully known, and that its causes were very imperfectly understood. It will be shown you in the proper report, that twenty thousand children in the city of New York, of suitable age, are not at all instructed in any of the public schools, while the whole number in all the residue of the State, not taught in common schools, does not exceed nine thousand. What had been regarded as individual, occasional and accidental prejudices, have proved to be opinions pervading a large mass, including at least one religious communion equally with all others entitled to civil tolerance — opinions cherished through a period of sixteen years, and ripened into a permanent conscientious distrust of the impartiality of the education given in the public schools. This distrust has been rendered still deeper, and more alienating, by a subversion of precious civil rights of those whose consciences are thus offended.

Happily in this, as in other instances, the evil is discovered to have had its origin no deeper than in a departure from the equality of general laws. In our general system of common schools, trustees chosen by taxpaying citizens, levy taxes, build school houses, employ and pay teachers, and govern schools which are subject to visitation by sim-

ilarly elected inspectors, who certify the qualifications of teachers; and all schools thus constituted participate in just proportion in the public moneys, which are conveyed to them by commissioners also elected by the people. Such schools are found distributed in average spaces of two and a half square miles throughout the inhabited portions of the State, and yet neither popular discontent, nor political strife, nor sectarian discord, has ever disturbed their peaceful instructions or impaired their eminent usefulness. In the public school system of the city, one hundred persons are trustees and inspectors, and by continued consent of the common council, are the dispensers of an annual average sum of $35,000, received from the Common School Fund of the State, and a sum equal to $95,000, derived from an undiscriminating tax upon the real and personal estates of the city. They build school houses chiefly with public funds, they appoint and remove teachers, fix their compensation, and prescribe the moral, intellectual and religious instruction which one-eighth of the rising generation of the State shall be required to receive. Their powers, more effective and far reaching than are exercised by the municipality of the city, are not derived from the community whose children are educated and whose property is taxed, nor even from the State, which is so great an almoner, and whose welfare is so deeply concerned, but from an incorporated and perpetual association which grants upon pecuniary subscription the privileges even of life membership and yet holds in fee simple the public school edifices, valued at eight hundred thousand dollars. Lest there might be too much responsibility, even to the association, that body can elect only one half of the trustees, and those thus selected appoint their fifty associates.

The philanthropy and patriotism of the present managers of the public schools, and their efficiency in imparting instruction, are cheerfully and gratefully admitted. Nor is it necessary to maintain that agents thus selected will

become unfaithful, or that a system that so jealously excludes popular interference, must necessarily be unequal in its operation. It is only insisted that the institution, after a fair and sufficient trial, has failed to gain that broad confidence reposed in the general system of the State, and indispensable to every scheme of universal education. No plan for that purpose can be defended, except on the ground that public instruction is one of the responsibilities of the government. It is, therefore, a manifest legislative duty to correct errors and defects in whatever system is established. In the present case, the failure amounts virtually to an exclusion of all the children thus withheld. I cannot overcome my regret, that every suggestion of amendment encounters so much opposition from those who defend the Public School system of the metropolis, as to show that in their judgment it can admit of no modification, either from tenderness to the consciences or regard to the civil rights of those aggrieved, or even for the reclamation of those for whose culture the State has so munificently provided; as if society must conform itself to the public schools, instead of the public schools adapting themselves to the exigencies of society. The late eminent Superintendent, after exposing the greatness of this public misfortune, and tracing it to the discrepancy between the local and general systems, suggested a remedy, which, although it is not urged to the exclusion of any other, seems to deserve dispassionate consideration. I submit, therefore, with entire willingness to approve whatever adequate remedy you may propose, the expediency of restoring to the people of the city of New York — what I am sure the people of no other part of the State would, upon any consideration, relinquish — the education of their children. For this purpose it is only necessary to vest the control of the common schools in a board to be composed of commissioners elected by the people; which board shall apportion the school moneys among all the schools, including those now existing, which shall be or-

ganized and conducted in conformity to its general regulations and the laws of the State, in the proportion of the number of pupils instructed. It is not left doubtful that the restoration to the common schools of the city, of this simple and equal feature of the common schools of the State, would remove every complaint, and bring into the seminaries the offspring of want and misfortune, presented by a grand jury, on a recent occasion, as neglected children of both sexes, who are found in hordes upon the wharves and in corners of the streets, surrounded by evil associations, disturbing the public peace, committing petty depredations and going from bad to worse, until their course terminates in high crimes and infamy.

This proposition, to gather the young from the streets and wharves into the nurseries which the State, solicitous for her security against ignorance, has prepared for them, has sometimes been treated as a device to appropriate the school fund to the endowment of seminaries for teaching languages and faiths, thus to perpetuate the prejudices it seeks to remove; sometimes as a scheme for dividing that precious fund among an hundred jarring sects, and thus increasing the religious animosities it strives to heal; sometimes as a plan to subvert the prevailing religion and introduce one repugnant to the consciences of our fellow citizens; while in truth, it simply proposes, by enlightening equally the minds of all, to enable them to detect error wherever it may exist, and to reduce uncongenial masses into one intelligent, virtuous, harmonious and happy people. Being now relieved from all such misconceptions, it presents the questions whether it is wiser and more humane to educate the offspring of the poor, than to leave them to grow up in ignorance and vice; whether juvenile vice is more easily eradicated by the court of sessions than by common schools; whether parents have a right to be heard concerning the instruction and instructors of their children, and taxpayers in relation to the expenditure of

public funds; whether in a republican government, it is necessary to interpose an independent corporation between the people and the schoolmaster, and whether it is wise and just to disfranchise an entire community of all control over public education, rather than suffer a part to be represented in proportion to its numbers and contributions. Since such considerations are now involved, what has hitherto been discussed as a question of benevolence and of universal education, has become one of equal civil rights, religious tolerance, and liberty of conscience. We could bear with us, in our retirement from public service, no recollection more worthy of being cherished through life, than that of having met such a question in the generous and confiding spirit of our institutions, and decided it upon the immutable principles on which they are based.[14]

The condition of the treasury will be fully presented by a report from the proper officer. The revenues from every source exhibit a prosperous increase. The amount derived from auction duties was $206,702, being an increase of $42,080 over the corresponding revenues in the previous fiscal year. The amount received by the superintendent for duties on the manufacture of salt, was $194,216, being more than was received in the previous year by $36,030. The manufacture of salt, and consequently the revenue, have been improved by allowing drawbacks upon our salt reaching distant markets. I suggest an inquiry into the expediency of reducing still lower the duty upon the manufacture, with a view to an improvement of the revenue and under a belief that such a measure would secure a market for our salt in the valley of the Mississippi. The superintendent renews his complaint of the unskillful process used in manufacturing fine salt, and suggests efforts for dis-

[14] Chapter 150, passed April 11, extended to New York the provisions of the general act relating to common schools, providing specifically for the election of commissioners, inspectors and trustees, and the organization of a board of education. The schools were to be free to all children between four and sixteen years of age. Sectarian instruction was prohibited.

covering a corrective. Confident anticipations of reviving the manufacture at Montezuma are expressed.[15]

Although the harvests were less abundant than heretofore, and there has been a considerable diversion of western trade, through the valley of the St. Lawrence, the tolls upon each of the canals exhibit a gratifying increase. The income from all during the season of navigation, was $2,034,878, exceeding the tolls in the previous year by $259,131, equal to 14 59-100 per cent. The tolls in 1831 were $1,223,801.

The Canajoharie and Catskill Railroad Company, and the Ithaca and Owego Railroad Company, having failed in July and October last to pay the interest on the stocks issued in their behalf, under laws passed in 1838 and 1840, the amount of that interest, equal to $11,405, was paid at the treasury. Proceedings of foreclosure have been instituted. A portion of the Canajoharie and Catskill railroad has been made, but I regret that there is not a probability of its completion under present circumstances. The Ithaca and Owego railroad is somewhat productive, and its profits will be much enhanced when it shall be brought into use as a connection of the New York and Erie railroad with our large inland lakes, the Erie canal and central railroads.

The revenue of all the canals during the fiscal year, after deducting only the expenses of collection and ordinary repairs, was $1,551,098. The permanent public debt, at the close of the last fiscal year, exclusively of temporary loans, contingent liabilities, and the balance of the Erie and Champlain canal debt, for the payment of which equivalent funds are set apart, is $15,540,530, to which must be added temporary loans amounting to $1,855,000, making the ag-

[15] Chapter 58, passed March 8, extended the charter of the Onondaga Salt Company, and chapter 302, passed April 12, contained administrative provisions relative to the Onondaga salt springs but without direct reference to the Governor's suggestions.

gregate debt $17,395,530, and the interest annually payable thereon, including also interest on the stocks loaned to the railroad companies which are in default, is $919,704. The debts consist of stocks chiefly redeemable in 1845, 1850, 1855 and 1860. The amount of stocks issued to the Delaware and Hudson Canal Company, and railroad companies, is $5,035,700. You will, of course, give immediate attention to proper measures for reimbursing temporary loans.

The Auburn and Rochester railroad and the Albany and West Stockbridge railroad, have been brought into successful operation. A further portion of the Long Island railroad, a new section of the Genesee Valley Canal, and the eastern section of the New York and Erie railroad, have been opened. Our railway communications having thus been extended one hundred and sixty miles, their aggregate length is seven hundred and forty-seven miles. Our canal navigation has also been increased by an addition of fifteen miles. Its total length is eight hundred and three miles. Enlightened citizens of this State and Pennsylvania have opened a prosperous exchange of gypsum, salt, coal, and iron, by the Chemung canal, and by the Ithaca and Owego railroad, while the enterprise of citizens of Albany and Boston has connected our interior communications with those of the eastern States, consisting of one hundred and fifty-two miles of canals, and eight hundred miles of railways, opening to us facilities for social intercourse with the people of those prosperous communities, and convenient access to their manufactories, quarries, seaports and fisheries. There is reason to expect that the continuous line now reaching from Boston four hundred and eighty-three miles to Batavia, will, in another year, be extended to Buffalo. So obviously do the growing relations between New York and the States around her contribute to the general prosperity, that we cannot but indulge a hope that more distant communities, with which

we are equally allied, will not find themselves ultimately constrained by fear of exposure of their peculiar institutions, or other causes, to adopt, in regard to us, such an opposite policy of annoyance and alienation, as they seem now to apprehend, may be necessary.

The progress of civilization is always indicated by the condition of those interior communications, by means of which political and social relations are formed, supplies exchanged, and defence established. Internal improvement is only an improvement of such facilities; and manifestly includes not less, at an advanced stage of a country, the construction of railways between important positions for commerce or defence, and of artificial channels between navigable waters, than, at earlier periods, an extension of common roads. The beneficent result of such improvements, present themselves on every side; and yet our facilities of communication are incomplete and insufficient. To render them more perfect, so as to increase their usefulness, and to extend them into regions partially or wholly denied their benefits, and thus remove inequalities of local advantage, and produce harmony and mutual affection, is our established policy. While it invades no rights, and promotes the convenience of all, it visits with peculiar beneficence citizens of humble circumstances and assiduous industry, indirectly augmenting and actively distributing capital, diminishing the necessity for its use, and reducing the cost of subsistence and exchange, and at the same time bringing leisure and facilities for intellectual enjoyment and permitting all, instead of the few, to go abroad on errands of inquiry, interest, duty and affection. It is thus that internal improvement contributes to ameliorate the condition of society and establish the sway of democratic power. Although it has been supposed presumptuous and irreverent to disturb natural monuments, and divert tributary streams, better opinions now prevail, and there is much reason for believing that we cannot more

acceptably manifest a becoming sense of the beneficence with which our lot has been cast, than by improving, to the greatest extent and with benevolent purposes, resources and advantages permitted to be enjoyed only by means of efforts conducive to our own happiness.

But the opposition which this policy encounters, relies now not so much on abstract principles, as on objections against particular enterprises and customary forms of prosecuting them. Unfortunately, however, those who object to a direct engagement of the State in such undertakings — those who maintain that corporations ought not to be entrusted with them — those who deem it wrong for the State to give or lend aid to such associations — those who object to spending revenues, held for the general benefit, in constructing roads and canals — those who deny the right of government to create debt for such purposes, or the expediency of such a mode of finance — and those who maintain that taxation ought always to be resorted to when improvements are undertaken, do not agree, nor consider it important to agree, upon any fiscal scheme; while justice to our predecessors, whose projects it belongs to us to execute, requires us to remember, that there has never been a railroad or canal, the feasibility or the usefulness of which, was not, in its early stages, sincerely and vehemently questioned.

It was well anticipated in 1835, that within a short period, perhaps not exceeding ten years, the business upon the Erie canal would surpass its capacity; and that navigation could not be maintained, even during that time, without new locks, aqueducts and other structures. The legislature, therefore, directed an enlargement, referring the dimensions of the new channel to the Canal Board, who adopted a scale, which although heretofore much questioned, is no longer a subject of controversy. In 1836, the Canal Commissioners estimated the cost of the enterprise at about twelve and a half millions. It was prosecuted until

1838 with the use of the surplus revenues of the canals, and at a rate which would have delayed its completion at least until 1860. The Legislature in 1838 directed the Commissioners to make contracts with a view to the entire enlargement. The then Commissioners executed this law by entering into contracts, pledging the treasury to pay sums equal to $12,477,336, all of which, except $579,204, was made payable before May, 1842. The same officers in 1839 raised their estimates of the aggregate cost of the enterprise to about twenty-three and a half millions, equal to almost one hundred per centum; and thereupon, in a season of extreme pecuniary pressure, the public mind received such a shock from a disclosure of the extent of the engagements of the State as to prevent any appropriation, although the then Commissioners showed a necessity for $4,200,000 within that year. In 1840 there was devoted to the work, besides the surplus tolls, $2,500,000, and in 1841, $2,150,000. There was paid prior to 1839, $1,884,537, and from that period until the close of the last fiscal year $8,126,608. The aggregate sum for which the present Commissioners had pledged the treasury at the close of the last fiscal year for this work, was $340,093; and since that time, contracts have been made for about $785,000. Besides the moneys already appropriated $11,830,000 would be required within three years to execute the work with the rapidity proposed in 1839, by the then Commissioners, or within four years, continuing the present retarded progress. Adhering from deeply cherished convictions to the policy of internal improvement in every change of circumstances, so long as the blessings of peace remain,—content to adhere most earnestly when support is most needed, and least of all desirous of being understood to doubt the expediency of the most vigorous prosecution of the enlargement—I have explained its origin and progress, with no other view, than to relieve it of any prevailing misapprehensions, and to invoke in its behalf, in an

important crisis, a return of the general confidence it obtained in its inception. The necessity for its completion is urgent. The original structures which remain, are hastening to decay, and threaten a serious embarrassment, if not a suspension of navigation. Thirty thousand three hundred and twenty boats passed one of the eastern locks during the last year, being an increase of three thousand three hundred and thirty-three, or twelve and one-third per cent, and showing an average passage of one boat in every period of ten and a half minutes. The voyage from Buffalo to Albany is already protracted thirty-six hours by unavoidable detention at the locks, and the inconvenience increases annually with the greater number of vessels. If we suppose the capacity of the canal would be exhausted by an average passage of a boat in six minutes, that event will happen according to the present increase of trade in 1846. The obstructions on the section between Frankfort and Syracuse, render a completion of its enlargement immediately necessary, while a depression of the surface of Lake Erie excites apprehensions of a suspension of navigation from the Niagara to the Seneca river, one hundred and fifty-five miles, unless the channel be deepened from Black Rock to Lockport, twenty-seven miles.

Unless we adopt a new financial policy, a suspension of the enterprise would involve a discontinuance of all other public works, because the State relies upon the increasing canal revenues to prosecute those undertakings; and the discontinuance of all, would at once convert the existing debts into a dead weight, depending for its removal on the revenues of a dilapidated and obstructed canal, with a diminishing trade. On the contrary, when the canal shall have been enlarged, we might, if necessary, while affording greater facilities, permanently raise the tolls twenty per cent, which, assuming the continuance of the present increase of trade, would in 1852 secure us an annual revenue of $3,892,000.

The operations of improvement have connected themselves with the general business of the country, and they affect the prices of subsistence, and the value of labor and land. Ten thousand laborers are employed, not to speak of those engaged in furnishing subsistence; and the moneys expended, constitute an important part of the circulating medium. A violation of contracts would draw after it aggravated damages; moneys paid for such damages would never find an equitable distribution among the many aggrieved persons not in communication with the government; capital would be suddenly diverted from its customary uses; the laborer would go for a time unemployed; want would meet us on every side; the public mind would be agitated; and the financial interests of the State as well as the general business of the country, would suffer deeply during a conflict between efforts to persevere in an ill-conceived scheme of retrenchment, and convulsive struggles to restore the policy which hitherto has been attended with unexampled benefits.

The Erie canal was designed not merely to facilitate the domestic exchange of productions and fabrics, nor as a tributary to the treasury, but also to divert to the Bay of New York, the trade of distant interior regions, and thus to secure to the State the political influence and social advantages of an extensive commerce. The competition was begun, not only in advance of a full exhibition of the prize, but before the resources of our competitors were developed. The sagacious minds which conceived the enterprise, never forgot, as we do, that ship navigation might be grasped six hundred miles up the St. Lawrence, and extended, at no disproportionate expense, by passages around the rapids of that river, the falls of Niagara, and the Sault St. Marie, two thousand five hundred miles. They knew that a canal only four feet deep would be quite too shallow a channel for the purposes contemplated, and they deplored the necessity which prescribed its inade-

quate dimensions, but they consoled themselves with a confident hope that another generation, enriched even by such a beginning, would not want magnanimity to perfect the enterprise. We compete with Canadian efforts, not only under the disadvantage of an increased distance from Lake Erie, by the way of our canal to European markets, but also under the effect of discriminating privileges in English ports to colonial shipments, exceeding what we could offer by even a free navigation of that channel. The Canadian authorities, having already made a ship canal around the falls of Niagara, and thus overcome the chief obstacle of the northern outlet of western trade, are pressing onward with energies derived from a reorganization of their political institutions, and sustained by the favor of the Imperial Government.

If, therefore, we would preserve the inestimable benefits of inland navigation which we now enjoy, if we would save the treasury from embarrassment, if we desire the accomplishment of the other public works, if we would in any degree extend our interior communications, if we would maintain the public faith, prevent general distress, retain our commercial precedence and political influence, and guard against the dismemberment of our territory, it is necessary to complete the enlargement of the Erie canal throughout, and with all convenient diligence.[16]

The New York and Erie railroad was at first estimated to cost six millions of dollars; but the subsequent adoption of a plan securing greater durability and usefulness, will, with other causes, raise the expense to above nine millions. The Legislature, in 1836, appropriated to the improvement a loan of public credit for three millions, but the conditions of the act being impracticable, the work was sus-

[16] Chapter 114, passed March 29, revived direct taxation, which was discontinued in 1827, and imposed a tax of one mill on a dollar on all property for general public purposes. Beginning with 1843 one half of the proceeds of the tax was to be set apart for canal purposes. Canal construction was, by the act, generally suspended except as to existing contracts.

pended until the law was modified in 1840, since which period the enterprise has been vigorously prosecuted. Contracts have been made for constructing the unfinished part of the road, except a section of forty miles between Deposit and Binghamton. Portions, 232 miles in length, will be ready for a superstructure in the present month. A sum exceeding four millions of dollars has been expended, of which $2,800,000 was derived from the State loan. If prosecuted with the same energy as during the last year, the road will be completed in 1843. Too deeply indebted to the people to cherish any local partialities or prejudices, I cannot withhold an expression of my satisfaction, that this enterprise is attaining its true rank, as second only among the physical improvements of New York and of the Union. Regarded at first as a rival of the Erie canal and of the central roads — pioneer of railways, seeking aid while the general feasibility and usefulness of such communications were yet in question — proposing to open a way through a thinly inhabited region, which, as was believed, presented obstacles insurmountable even by modern skill, and whose condition contrasted unhappily with the prosperity of parts of the State earlier visited by the public enterprise — this great project, doomed as it was by the Legislature to rely upon private capital alone, and then denounced for the insufficiency of that support, has been especially subjected to the distrust and opposition which it is the fate of all ameliorating enterprises to encounter. The auspicious results of the partial completion of the work, exceed alike the early expectations of its advocates, and all our experience of railways. It conveys daily, with regularity, through those passes once deemed so formidable, numerous passengers, at an average fare of less than two cents per mile, and agricultural productions, merchandise and fabrics, at rates proportionably reduced; and in its very beginning, like the Erie canal, gives pledges of a speedy reimbursement of its cost, and

guaranties, if there be wisdom in the public councils, a wider diffusion of the benefits of improvement than has been before conceived. I recommend its vigorous prosecution, upon the same general considerations which have been urged for completing the enlargement of the Erie canal. The question, however, involves an inquiry concerning the most suitable manner of promoting that object.

A governmental management of railroads would be an experiment here, and is supposed to have been unsuccessful elsewhere; although it is not obvious why, with diligence, skill and experience, equal to what are employed in managing the canals, a system of supervision of railroads could not be adopted. There is much force in the argument, that it would increase central influence; yet, it is not clear that the influence of corporations would be more harmless, and there is much reason to believe that the more speedy diffusion of intelligence will neutralize such influence in either form. Railways, like other property, cannot be obtained by the public more than by individuals, without cost. Until the investment becomes productive, that cost must be paid out of present revenues, loans or taxes; while resort should be had to neither of these, except to obtain adequate public benefits. But capitalists select the projects which are most feasible, and promise most speedy returns; while there is a class of even more extensively useful improvements, the magnitude of which surpasses the capacity of such associations. Such are the Erie canal and the New York and Erie railroad; and as a whole, such would be a central line of railways from New York to Lake Erie, through the valleys of the Hudson and of the Mohawk. To wait for individual enterprise to accomplish such improvements, is to delay them for a subsequent, perhaps remote, generation. The State may well claim a right to make or improve highways, and whatever profits she permits to be exacted, for their use when so constructed. The public welfare requires that the rates of toll shall be always kept as low as possible.

But all associations have a disposition to increase more and more their gains, and consult less and less the public convenience; whereas agents, directly responsible to the people, are obliged to consult the general welfare diligently and constantly. Surely no one can suppose, that the vast amount of private capital invested in railroads in the United States is unproductive. On the contrary, although there are many injudicious and incomplete works of that kind, the whole combined, yield returns, and every year increases their productiveness. If observations, made with some care, are not altogether inaccurate, time will soon disclose the gratifying truth, that in this State a judicious system of railways, with proper branches and extensions penetrating every district, reaching every resource and affording facilities for travel and transportation, with rates of toll not considerably exceeding those of steamboat or canal navigation, would, as one entire system, yield an adequate net revenue. This will indeed be apparent, if we consider the great economy of time and money resulting from such improvements, or even if we remember that private capital is seldom gratuitously devoted to the public good. We are therefore, near the time when conflicting interests and local jealousies concerning internal improvement, will cease, because the more the system is extended the greater will be the facility of extension. No abrupt change of policy is necessary, however, to reach such a result, if it be attainable. When we remember that the first iron rail in this State was laid only ten years ago; that we now have eight hundred miles of railways; that during a period of pecuniary pressure, an average of ninety miles is annually added to the chain, and that a longer extent is in progress at the close than in the beginning of every year, we shall be convinced that, even as we now proceed, we are approaching to the result indicated. I advise, therefore, no unnecessary departure from that system at this time; but, I respectfully recommend, that all such improvements be

henceforth regarded rather as parts of the general system of interior communications, designed to promote the general welfare, than as mere investments for gain; that a careful supervision of all such roads be established, to ascertain the accommodations afforded to the public, the fares received, and the profits realized; and that the right of resumption stipulated in charters, shall be, as hitherto, carefully preserved. The Legislature would thus always be enabled to decide in regard to each road, whether the public good required interposition by way of regulation or resumption. Entertaining such opinions, and especially applying them to the New York and Erie railroad, but with none other than feelings of respect for the benefactors under whose auspices it has thus far been prosecuted through so many and great embarrassments, I shall cheerfully approve any mode for continuing the enterprise, that shall seem to the Legislature expedient, assuming of course that the measure will involve no unnecessary public sacrifice.[17]

The Genesee Valley canal was undertaken in 1836. Its cost, then estimated at near two millions, was subsequently raised to about five millions. The Black River canal was commenced at the same time, upon an estimate of about one million, but which was afterwards advanced to two millions. Loans for these improvements, amounting to $2,800,000 were authorized previously to 1839, and like loans for $1,600,000 since that time. Although it might be conceded that these enterprises would have been delayed, if their real cost had been correctly understood, or the subsequent embarrassments of the country foreseen, yet when the condition of the works, their destined connection with navigable waters, penetrating remote recesses of the coun-

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17 Chapter 227, passed April 11, extended for two years after the passage of the act, the time allowed for the construction of one-fourth of the New York and Erie railroad as fixed by the act of 1832.

A concurrent resolution was adopted in August, 1842, postponing the sale of the New York and Erie railroad until the first Tuesday of May, 1843.

try, and their ultimate usefulness are considered, together with the injurious consequences which would result from abandoning such undertakings, I am sure that nothing but an inflexible necessity, not yet apparent, will induce your consent to a measure so widely injurious.

Nor can I omit to invite your attention to two suggestions of improvement yet unattempted. A railway from the St. Lawrence to Lake Champlain, and ultimately to be extended to tide water, is manifestly required as a preparation for public defence — to develop the rich mineral resources of the border counties — to retain the trade of Lake Ontario — and to counteract the efforts of the Canadian Government to guide the travel and trade of those counties, and of the far west, down the valley of the St. Lawrence. The delay of the undertaking exhibits a presumptuous confidence in our ability, to retain, without effort, advantages which it should be remembered are altogether acquired. The other proposed improvement, would be a similar communication between the city of New York and the central points of our northern, eastern and western trade. The enlightened citizens of Massachusetts have constructed a railway to invite to her flourishing capital the winter trade, which our metropolis seems so much to undervalue; and that enterprise is sure, under existing circumstances, to divert a portion of the trade during all seasons. There is undoubtedly abundant capital in the city of New York, and sufficient zeal for its welfare, to induce an accomplishment of the proposed communication; but if, for any cause, that city should remain unmoved by rivalry so close, it may be wise to consider whether the inhabitants of our interior districts can longer submit to a periodical exclusion from its warehouses and wharves, and whether they will permit their commercial emporium to be deprived of any of the advantages it has already derived from the enlightened policy of the State.

The estimated cost of all the public works in progress, including two-thirds of the expense of the New York and Erie railroad, such being the proportion in which the State has contributed to that enterprise, is $36,598,379, of which sum it yet remains for the Legislature to provide $17,265,-130. Large as this sum is, there is no reason to suppose that it surpasses our fiscal ability. It is true that the State owes a debt, including temporary loans, of seventeen millions; but it is not in any form a dead weight, like public debts contracted in war, or for improvident expenditures. It has been created in constructing a system of works, which not only is to yield a return when finished, but which is so productive in every stage, that its profits furnish all the means necessary for its completion, without exacting a dollar from land, labor, or any other resource; a system which leaves nothing to speculation concerning its adequacy to pay the interest on its cost, because it pays interest in advance, nor concerning the reimbursement of the cost itself, because the surplus profits over the annual interest are adequate to procure the further sum required, and would at any time, when so applied, ensure a rapid extinguishment of the principal. The debt is large because the enterprise is great. It remains for you to decide whether the indebtedness shall be made larger, or whether you will devise a different system of finance; but if the present system and progress are continued, the entire enterprise will be accomplished in 1846. The treasury will be relieved of all pressure from the railroad indebtedness. Then expenditures may cease, and the canal revenues, now exclusively applied to that purpose, extinguish the debt incurred in their construction within fifteen years thereafter; after which these great public works will continue to pour into the treasury a river of tribute. For what conceivable purpose should we be induced to divert those revenues from so useful, so important a destination? Abundant provision has been made for all the interest upon existing debts, for

the civil list, for the administration of justice, for the endowment of education, and for public alms in every form that philanthropy and Christian benevolence suggest.

Since the last adjournment of the Legislature, the public wealth has been augmented by a virtual restoration to the State of its share of the National Domain. This estate, of which the National Government is now our trustee, consists of lands five times exceeding the territory we possess, and exceeding the surface of the islands of Great Britain. Even in the present season of extreme depression it yields an annual revenue of about $200,000, which must continue to increase at least throughout the present century. Internal improvement is forever, as now, to constitute the defence and ornament of the State; and it will be an interesting fact in the history of that policy that its severest trial was coincident with the triumphant practical demonstration of the safety and usefulness of the system, and with so vast an augmentation of the public wealth. Beyond all these resources, moreover, there is another to which we need never resort for internal improvements, but a reference to which should be sufficient to dispel any lingering doubt of the fiscal ability of the State — the untaxed wealth of the people, equal to seven hundred millions of dollars. Former periods and other States are often brought into favorable contrast with our present condition; whereas a moment's reflection will convince us that the State was never so truly rich as at the present time; nor would it be an unprofitable inquiry, whether in ancient or modern times there have existed two and a half millions of people so eminently blessed with the means of physical, moral and social improvement.

But notwithstanding these resources, the prosecution of the public works is embarrassed. It is, however, the fortune of enterprise — it is essential to enterprise — it is enterprise itself, to encounter embarrassments; and there is no merit in success which is obtained without effort and

involves no sacrifice. The present emergency will nevertheless be found to exact no extraordinary energy or patriotism.

Since the works were undertaken, the rate of interest demanded upon loans to the State has advanced from five to about seven per cent. Prudence, under such circumstances, counsels moderation; yet the value of money has not increased as much as the prices of labor and subsistence have fallen; and it would certainly be the worst of all economy to discontinue enterprises so important for a reason so inadequate, or to sacrifice in delays and damages, more than the additional cost resulting from the enhanced rate of interest. While we ought, therefore, to pursue the undertakings cautiously and even at some apparent although unreal sacrifice, we are, nevertheless, required to put forth every effort to restore our public stocks to their former value. Such efforts, however, would prove unavailing, if the causes of the evil were misunderstood. We are in competition with other States and countries in borrowing money. The securities of other nations are not depreciated, while those of our sister States, whether they owe less or more, are reduced, none less than our own, and some 30, 40, 50, 60, and 70, even 80 per cent. The Federal Government, which has once paid absolutely a debt of $189,000,000, and which now owes nothing, is unable at the same rate of interest we offer, to obtain a loan for three years, of an amount equal to only half a year's revenues. Is it true then that the depreciation of our stocks has resulted from the greatness of our debt, or from the magnitude of our undertakings, or from any fiscal unsoundness or error? On the contrary, it is apparent, that our stocks are depressed by some general cause affecting all American governmental securities. Some of the states have with youthful imprudence, embarked without proper fiscal systems, in great enterprises, which seemed to us as well as to themselves, feasible and not disproportionate to their

ability. A commercial revulsion has overtaken them before their works could be completed and rendered productive. Supplies of capital have ceased — the works remain unfinished — the States fail to pay interest punctually; and since punctuality is the life of credit, their credit is expiring.

This error of the States has been aggravated by other circumstances. To retrieve losses, they plead a failure of consideration or want of authority on the part of their agents, or other excuse, against bonds bearing all the forms of guaranties of public faith, and for which the authorities received, and applied to public uses, sums deemed equivalent. It is known throughout the world, and to none better than to capitalists, that the people here exercise absolute control over legislation, and it is doubted whether they will have the virtue to maintain public credit under the inconvenience of taxation. When we ourselves admit such apprehensions, can we be surprised that they should be entertained in countries where it is a maxim that mankind must be governed by fraud or force? It results from the intimacy of our federation, and from the uniformity of our institutions, and of the policy, character, principles and interests of the people, that hesitation by one State brings distrust upon all. Another question, of broader scope and even more painful interest, follows closely upon that which relates to maintaining the public faith. Can governments continue to exist that put justice at defiance and trample upon sacred obligations? How shall they collect revenues and enforce the payment of duties, taxes and claims? How conduct affairs, exact obedience, preserve order, execute municipal justice; and how can they protect themselves against injustice and aggression from abroad? Such is the ordeal through which American credit is passing; and it retains and can retain only the confidence of those, who, notwithstanding all unfavorable indications, believe in an ultimate payment of the principal and interest of the debts of the States in the virtue of the people, and in the permanence of republican institutions.

Regarding the crisis as one calling for a sacrifice of all party differences, I might concede that misapprehensions, in themselves harmless, may now be injuriously affecting the credit of this State since they combine with causes operating so injuriously. Nevertheless, it is evident that our efforts for restoration must, at least for a time, be only partially successful, and that even if they should be fully so, we could hope for no permanent prosperity while many of our sister States should remain embarrassed, discredited and dishonored. The country is falling from a career of high enterprise; and the energies, not of one, or of several, but of all the States, must be aroused to regain the course. How shall those energies be awakened, combined and directed? The General Government has seemed to me to present the only suitable and adequate agency for such a purpose. It is, therefore, observed with much satisfaction, that the Executive authorities of the Union are manifesting, not merely watchfulness in regard to the public danger, but also a just and generous spirit towards the States. Whatever may have been designed, the Federal Constitution has been, during several years past, practically construed so as to cast upon the States the chief expense of establishing and maintaining postroads, and facilities for carrying on inland trade and transporting arms and munitions of war, while the revenues derived from foreign commerce and from the public domain, both of which would seem to have been properly chargeable with the expense of such operations, have flowed into the national treasury.

The officers presiding over the War Department and the General Post Office, very freely admit that the General Government derives through their departments, from the internal improvements of the States, advantages more than equivalent to the cost of all that has been accomplished. The Union has no interests separate from those of the

States; and their welfare and security are not less the care of the General Government than of the State institutions. Since the embarrassments of the States have chiefly been incurred in improving roads, rivers, and canals; in extending education, and in laying other great foundations of national prosperity and union, it is not less just than wise, that the General Government should encourage and assist, as far as the Constitution may allow, any of those communities in a critical reverse, which, although brought on by the patriotic policy they have pursued, nevertheless threatens the honor if not the perpetuity of the Republic. Many of the States are free from embarrassment. This State, although with some temporary inconvenience, will triumphantly sustain herself; and most of the other members of the Union will recover fiscal prosperity by a judicious application of their newly acquired revenues, arising from the public lands. But inasmuch as the distribution law adopted the just ratio of representative population, instead of that of the extent of roads and canals to be constructed, or of debts to be paid, some of the embarrassed States may require temporary relief; and we cannot, without doubting what we ourselves have achieved, distrust their ultimate ability, if enabled to complete their improvements.

But although the causes affecting our public securities lie beyond the reach of direct efforts, we can nevertheless mitigate the evil and contribute to a remedy. It is an urgent duty to fortify our credit, not merely for the purpose of securing a discrimination in our favor, but also to furnish an encouraging example to our sister States. I suggest, with a view to this purpose, a rigid adherence, under all circumstances, to the rule hitherto observed, that the whole public debt shall not be raised above such an amount as that its interest can be paid out of the current surplus revenues of the canals; and to remove all question concerning the fiscal soundness and moral integrity of the State,

I recommend that all the future revenues from the National Domain shall be pledged as a sinking fund to the extinguishment of the principal of the public debts, annually paying, or providing for the payment of a part of the principal, and absorbing first the older debts. If seventeen millions of dollars are yet required to complete our public works, the system I have suggested would in 1855 discharge the whole of our present and future indebtedness, and after that time leave us unincumbered annual revenues. If we adopt this, or some more judicious fiscal system — if we truly value our resources and justly appreciate our enterprises, we may prosecute them diligently and firmly, and with even higher confidence in their perfect success and unbounded usefulness, than has ever before been entertained. If, moreover, we declare that at no time, nor under any circumstances, can this State justify or palliate a violation of public faith by any of our sister States, but at the same time yield to those States in performing their obligations, our sympathy, support and such aid as is within our constitutional province; if we stand by those younger, less wealthy and less powerful, but equally patriotic members of the confederacy in this crisis as we know full well they would stand by us if menaced from abroad — we shall then see them rapidly recovering from their embarrassments, and worthily regaining the confidence of mankind. Then each star will be firmly fixed, the clouds now gathering will speedily disperse, and the constellation continue to shed its cheering light upon the way along which the nations of the earth are advancing to constitutional liberty.

WILLIAM H. SEWARD.

Albany, January 4th, 1842.

SPECIAL MESSAGES.

January 5. To the Legislature: Transmitting the resignation of John C. Spencer, as secretary of State.[18]

January 6. To the Assembly: Transmitting the annual report of the Commissary General, and inviting attention to the dilapidated condition of the arsenal in the city of New York.[19]

January 8. To the Assembly: Transmitting resolutions adopted by the Legislature of Connecticut and Maine recommending a constitutional amendment restricting the eligibility of the President to one term.

January 8. To the Assembly: Transmitting resolutions adopted by the Legislature of Delaware, disapproving Governor Seward's refusal to surrender Peter Johnson and others, as alleged fugitives from justice, on demand of the Governor of Virginia, and urging Governor Seward to review his course, and ultimately act in accordance with the rights secured to the slaveholding states, under the wise and salutary provisions of our great national compact.

January 8. To the Assembly: Transmitting resolutions adopted by the Legislature of Vermont, favoring a law fixing a uniform date in all of the states for the election of President and Vice-President.

January 8. To the Assembly: Transmitting resolutions adopted by the Legislature of Connecticut favoring a protective tariff.

January 17. To the Legislature: Transmitting the annual report of the Adjutant General.

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[18] Samuel Young was appointed secretary of state in place of John C. Spencer, resigned.

[19] Chapter 303, passed April 12, appropriated $10,000 for repairs on the arsenal in New York, and $3,000 for repairs on other arsenals, to be paid from the proceeds of land on Staten Island sold by the State to the United States.

January 22. To the Senate:

Memorandum on approval of a bill entitled "An act to repeal an act entitled 'An act respecting the appointment of receivers of monied institutions, passed April 27, 1841,' and to limit the compensation of receivers."

"The law thus proposed to be repealed was approved by me, not simply from an accustomed deference to the representatives of the people, but under a belief that its provisions would have a salutary effect in relieving the court of chancery from the duty of conferring appointments which had come to be regarded as constituting no inconsiderable official patronage, and thus, in accordance with the spirit of my previous recommendations, abridging the aristocratic and overshadowing power of that court.

It seemed to me peculiarly proper, also, to vest the power of designating receivers in the bank commissioners, on account of their intimate acquaintance with the affairs of insolvent corporations and the general financial interests of the country, while it was believed that the amendment of the law, so as to permit receivers to compromise and compound doubtful claims and demands, would be at once humane and beneficial in securing creditors and corporations against losses by delays and litigation.

Not at all doubting that the legislature have examined the subject in all its relations, and with better information than I possess, I may nevertheless be permitted to observe that nothing has come to my knowledge, during the nine months which have elapsed since the law went into effect, to induce a belief that it has operated injuriously.

But the general responsibilities of making laws rest with the legislature, while on the executive are devolved only the duties of recommending measures, and of rejecting, for sufficient causes, bills originated and perfected by the representatives of the people. Although the executive might reluctantly feel himself obliged to interpose objections in a case where a proposed law should have hastily

and inconsiderately passed the legislature, or should contravene the letter or spirit of the constitution, or infringe individual rights, or impair the necessary efficiency of the executive administration, or invade the constitutional or appropriate powers of any department of the government, or threaten any pervading or lasting injury to the public welfare, or should tend to produce inequality or injustice, or deeply compromise any recognized principles of republican institutions, yet the person administering the government could not interpose objections to less important bills upon the mere ground of a difference of opinion concerning their expediency, without assuming an undue share of legislative responsibility.

Applying these principles to the present case, I have not thought it my duty to embarrass the action of the Legislature; but, cheerfully confiding in their superior wisdom, have approved and signed the bill, availing myself of this occasion to submit an explanation, inasmuch as the proceeding involves an apparent inconsistency which might lead to misapprehensions concerning my views of the policy of the measure."

This message, except the formal part announcing the approval of the bill was expunged by order of the Senate, it being claimed that the Governor had no power to assign the grounds of his approval. The text of the message is given in "Seward's Works" (1853) edited by George E. Baker, volume 2, p. 409. This bill became chapter 3. [See special message of January 26.]

January 25. To the Legislature: Transmitting resolutions adopted by the Legislature of Alabama protesting against the act of Congress making a distribution of the proceeds of public lands, refusing to receive the amount apportioned to Alabama, and demanding a repeal of the act.[20]

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[20] The Legislature adopted a concurrent resolution in April, urging an immediate repeal of the act to appropriate the proceeds of the public lands passed at the extra session of Congress, September 4, 1841.

January 25. To the Legislature: Transmitting resolutions adopted by the Legislature of Alabama favoring the admission of Texas into the union.

January 26. To the Senate: The Governor sent the following communication, which the Senate refused to receive and ordered it returned to him:

"ALBANY, *January* 26, 1842.

"On the 22d day of January instant, I transmitted to the Senate a message in writing, according to an immemorial usage, informing them that I had approved and signed a bill which had originated in that house, and had passed the legislature. The bill repealed a law which had been only nine months in force, and had received my approval. That law was regarded by me (with all due deference, nevertheless, to the legislature) as one of so benign and useful a tendency, that I could not but regret that it was thought necessary to take it from the statute book. At the same time the occasion seemed not to be one of those important exigencies which justify the interposition of the executive power, to embarrass the action of the legislature. Under these circumstances it seemed to be my duty to make known to the legislature, and, by the customary form of communication to them, to make known to the people, the special ground of my acquiescence in the action of the Legislature, to the end that whether now or hereafter, the subject should be reconsidered by the representatives of the people, or by the people themselves, that acquiescence should not be construed into a sanction of the policy of the act. In making that communication I was governed by what I trust was a just sense of official responsibility.

Although the message was transmitted to the Senate, it was, as all such communications are, designed for the information of the legislature. The constitution requires that each house shall keep a journal of its proceedings,[a]

[a] Const. 1821, art. 1, § 4.

and in that journal it has been customary to enter all the proceedings not only of both houses, but also all communications from the executive touching such proceedings. I may be permitted to observe, with due respect, that it is supposed these journals are directed to be kept not so much for the convenience of the Legislature, as for the information of the people, and that each department of the government is responsible to the people for its acts as they appear on those records.

The senate, after receiving the communication, has thought proper, in a marked and formal manner, to cause it to be excluded from the journal of that house, without declaring that it was supposed to express or manifest any disrespect to the legislature, or to the senate.

It is not my purpose to complain in any manner of the proceedings, upon the ground of its injustice, although by the suppression of the message the reasons of executive action upon a question of public policy which cannot be deemed unimportant, since it has become the subject of a law, are withheld from the people; and it may not be unreasonable to suppose that when the traditional memory of the transaction shall have passed away, the record of the senate will raise an implication that the present incumbent of the executive department so far misunderstood the proprieties of his station, as to address the legislature in terms disrespectful or discourteous. But it is a solemn duty of the person administering the government of this state at all times to preserve, as far as may depend upon him, the constitutional power of the department assigned to him. I do, therefore, with extreme regret that such a proceeding has become necessary, and with the most respectful deference, inform the senate that the suppression of the communication referred to, is regarded by me as a dangerous invasion of the rights of the executive depart-

ment, unwarranted by any precedent in the history of the government, and without any justification in the circumstances of the transaction.

WILLIAM H. SEWARD."

See "Seward's Works" by Baker, volume 2, page 411.

January 27. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *January* 27, 1842.

"In compliance with a request of the Legislature of Georgia, I submit a preamble and resolutions of that body, approving the Constitution of the United States, and especially the veto power of the President;[b] objecting to a Bank of the United States and condemning the action of Congress directing the distribution of the proceeds of the public lands; the bankrupt bill, the loan bill, the revenue bill, the repeal of the sub-treasury law, the bill for the relief of the widow of the late President of the United States, the appointment of the present minister plenipotentiary to the Court of St. James, a late appropriation for the support of the general postoffice and other measures of the General Government.

WILLIAM H. SEWARD."

February 3. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *February* 3, 1842.

"I lay before the Legislature a statement submitted by the Prison Discipline Society, of moneys paid by that association, for the support of chaplains in the State prisons at Auburn and Mount Pleasant, during several years before the Legislature provided for the services of such instructors in those penitentiaries. The society solicits the Legislature to reimburse the moneys thus paid.

WILLIAM H. SEWARD."

[b] U. S. Const. art. 1, § 7, clause 2.

February 3. To the Assembly: Transmitting resolutions adopted by the Legislature of Kentucky declaring the obligation of the several states to preserve inviolate their faith pledged to public creditors.

February 3. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *February* 3, 1842.

"I submit a petition of Sally Ann Niles, widow and executrix of the late Hezekiah Niles of Baltimore, praying the Legislature to purchase for the use of the State several copies of the Weekly Register, a journal published by him.

WILLIAM H. SEWARD."

February 5. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *February* 5, 1842.

"In the year 1817, the account between this State and the Government of the United States, concerning the quota of arms and other military stores to which the State was entitled under a law of Congress passed in 1808, and also concerning property of the same kind mutually loaned or advanced to each other by the State and the United States during the war of 1812, had become exceedingly complicated. In order to adjust the account it was deemed necessary that an agent of this State should repair to Washington, because the business required frequent and continual access to the records and accounts in the department of war. An account was in the same year stated and agreed to by the agents of the respective parties, and exhibited a balance of two hundred thousand dollars in favor of this State.

The General Government approved this settlement and agreed to pay in arms and munitions of war, the balance thus ascertained to be due. Subsequently, the Government

of the United States claimed to have discovered errors in the account which would reduce the amount to be paid to the State. The Commissary General of this State was charged by the Governor with the duty of obtaining a settlement of the account, and the persons who successively filled that station from 1818 until 1832, bestowed their attention upon the subject. The death of Alexander M. Muir, Commissary General in 1832, arrested the negotiation in which he was engaged, and from that time until now, it has been impossible to resume them, because some of the papers relating to the subject were not accessible. I have recently caused a full examination of the correspondence between this State and the United States to be made, and have caused the documents relating to the subject to be collected and arranged.

I submit to the Legislature the expediency of adopting measures for the deputation of some suitable agent to proceed to Washington and procure a final settlement of the protracted but nevertheless very important claim upon the Government of the United States. I do not deem it useful to transmit the voluminous papers and documents relating to the subject. Nevertheless, they will be laid before the Legislature or their committees, if such shall be the pleasure of either House.

WILLIAM H. SEWARD."

February 5. To the Assembly: Transmitting resolutions adopted by the Legislature of Kentucky requesting Congress to take measures to ascertain the number, name and residence of all the surviving soldiers of the Revolution of whatever rank, and proposing that upon the death of all of them the President issue his proclamation fixing a day "and prescribing the manner in which a grateful people may do honor to the memory and character of the immortal heroes and patriots collectively, by whose toils and valor the boon of freedom is inherited."

February 8. To the Assembly: Transmitting proceedings at a meeting of the inhabitants of the town of Alexandria in the district of Columbia at which a vote was taken on a proposition to retrocede to the State of Virginia the town and county of Alexandria, resulting in large majority in favor of retrocession.

The town and county of Alexandria were receded to Virginia by an act of Congress passed July 9, 1846.

February 11. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *February* 11, 1842.

"In my annual message I informed the Legislature that the State of Virginia had adopted a law calculated to embarrass our commerce, and which would go into effect on the first of May next, unless this State should see fit to comply with certain requirements made by our sister State.

It is now my duty to announce that the General Assembly of South Carolina, on the seventeenth day of December one thousand eight hundred and forty-one, enacted a law declaring that it shall not be lawful for any vessel, of any size or description, owned in whole or in part, or commanded or navigated by any citizen or resident of the State of New York, or any such vessel owned in whole or in part, or commanded or navigated by any other person than an actual inhabitant and resident of South Carolina, and departing from any port in that Commonwealth to any port of New York, to leave the waters of South Carolina until the commandant of such vessel shall have submitted to search, and have complied with restrictions similar to those attempted to be imposed upon our vessels found in Virginia, by the law of that State.

I submit a copy of the act of South Carolina, by which it will be seen that the law will take effect on the first of May next, but that the Governor is authorized to suspend its

operation on being officially informed that the Executive of New York has consented to comply with the demand of the State of Virginia, hitherto disallowed, for a surrender of certain persons as fugitives from justice, and that the Legislature of this State has repealed the act of 1840, extending the right of trial by jury.

We are indebted to the courtesy of the General Assembly of South Carolina for a report and resolutions setting forth the grounds of their very extraordinary proceeding. Since that proceeding contemplates certain specified action by the Executive, as well as by the Legislature, of this State, as a condition upon which the citizens of this State shall hereafter enjoy unmolested in South Carolina, rights and immunities guaranteed to them by the Constitution of the United States,[c] I have respectfully communicated to the Governor of South Carolina my decision upon the proposition thus submitted to me. That decision is in maintenance of the grounds heretofore assumed in my correspondence with the authorities of the State of Virginia.

The General Assembly of South Carolina pronounce our law extending the right of trial by jury an act which is the most alarming and dangerous form in which fanaticism or folly has made its assaults on an ancient domestic institution cherished in the hearts of the people of the south, and they very clearly and fully set forth the reasons for this opinion. I submit them, in full confidence that they will receive that early and deliberate consideration which is due to them, not only from the magnitude of the subject and the shortness of the period which is to elapse before the rigorous measures of Virginia and South Carolina will take effect, but also from the respect toward South Carolina which I am sure is entertained by the people of this State. My own views of the law in question, differing essentially from those presented in the papers now submitted, have been already made known to the Legislature. [See note 5.]

WILLIAM H. SEWARD."

[c] U. S. Const. art. 4, § 2, clause 1; see also 14th Am.

The following is Governor Seward's letter to the Governor of South Carolina, referred to in the foregoing message:

STATE OF NEW YORK,

EXECUTIVE DEPARTMENT,
ALBANY, *February 10th*, 1842.

SIR.—I have had the honor to receive your communication of December last, transmitting to me a copy of a law passed by the General Assembly of South Carolina, entitled 'An act to prevent the citizens of New York from carrying slaves, or persons held to service, out of this State, and to prevent the escape of persons charged with the commission of any crime.' The communication is accompanied by a pertinent report, and by resolutions of the General Assembly, explaining the reasons of the enactment.

The act declares that it shall take effect from and after the first day of May next, and that the Governor is authorized to suspend its operations upon being officially informed that the Executive of New York has *bona fide* consented to comply with a demand heretofore made by the authorities of Virginia for the surrender of Peter Johnson, Edward Smith and Isaac Gansey, as fugitives from justice, and that the Legislature of this State has repealed a law passed in 1840, extending the right of trial by jury to persons claimed under proceedings before the officers and magistrates of this State as owing service in other States.

It seems my duty, therefore, with the frankness of communication which ought to prevail between the several States of the Union, to make known to your Excellency, as I have uniformly and on all proper occasions informed the State of Virginia, that the Executive of this State declined to comply with the requisition of the Executive of Virginia referred to in the act of South Carolina, upon the grounds that the process was deemed to be without warrant or authority in the Constitution of the United States,

or in the laws and customs of this State, and that nothing has occurred since that decision was made to change the convictions then entertained.

Whether the law of this State extending the trial by jury be unconstitutional or injurious to the State of South Carolina, or to any other State, is a question which properly belongs to the legislative representatives of the people, and has been commended to their respectful consideration. It also belongs to them to consider at least in the first instance, whether the measure which the State of South Carolina has adopted calls for any action on the part of this State. I have, therefore, very cheerfully complied with your Excellency's request, by submitting to the Legislature the papers you have transmitted.

I remain, with very high consideration,

Your most obedient servant,

WILLIAM H. SEWARD.

His Excellency JOHN P. RICHARDSON,
Governor of South Carolina."

[See Senate Document No. 41 and Assembly Document No. 62.]

February 12. To the Assembly: Transmitting a memorial from the officers of the Ninth Regiment of Infantry in the militia "praying for the adoption of measures for effecting a radical reform of the militia system" and inviting legislative consideration of the subject.

February 17. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *February* 16, 1842.

"An act was passed in 1840, directing the appointment of commissioners to make a full and accurate examination and survey of the several practicable routes for a railroad from the river St. Lawrence at Ogdensburgh to Lake Cham-

plain, including a route through the valley of the Au Sable river, with maps, plans, profiles and estimates, to illustrate the advantages of the respective routes. The commissioners who were appointed by the Executive, performed their duties and submitted their report at the last session of the Legislature. The citizens of Essex county believing that report to be not altogether just, have, during the past year, procured an examination of the subject by William R. Casey, an engineer selected by them, who has prepared a report of his proceedings. The report is herewith transmitted to the Legislature in compliance with a request of the citizens of Essex County.

WILLIAM H. SEWARD."

For the Casey report, see Assembly Document, No. 70.

February 23. To the Senate:

"EXECUTIVE CHAMBER,
February 23, 1842.

"The State of South Carolina asserts, in the resolutions herewith submitted, that the act of Congress which directs an appropriation of the proceeds of the public lands among the States is unconstitutional, and violates the terms of cession. She, therefore, announces her determination to refuse her share of the funds, and requests me to solicit your co-operation in annulling and repealing the law.

Her argument is, that 'the United States of America is a body corporate, distinct from the States as political bodies, and capable of holding real and personal property;' and that the public lands, like the vessels of the navy, belong to the United States of America, and like them 'are to be used' or 'disposed of' for 'the common benefit of all the States,' but 'the property in them does not vest in any or in all the individual States for partition.'

South Carolina, in 1832, invoked our cooperation in annulling a tariff law, and then informed us that in her opin-

ion all national sovereignty remained undivided and undiminished in the several States, and that the United States of America, considered in relation to the several States, was strictly and merely a confederation, without absolute independence or sovereignty. Happily it is not necessary to decide between these certainly very incongruous expositions of the same text by the same respected authority. The public lands were ceded by the several States and acquired by the United States of America before the Federal Constitution was adopted, and at a time when the United States of America was that mere confederacy of independent sovereign States that South Carolina, in 1832, insisted that it continued to be, notwithstanding the adoption of the Federal Constitution. The deeds of cession respectively, and the resolutions inviting the cession, declared that the lands should enure to the common use and benefit of such States, including the granting State, as should become members of the confederacy; and it stipulated that the ceded territory should be formed into States. The Constitution did not change the estate, but on the contrary expressly declared that no claim of the United States, or of any particular State, should be impaired.[d] Besides, since Congress is authorized to dispose of the lands for the common benefit, it seems to be competent for that body to decide that a partition of the proceeds among the several States, in a just proportion, is such a disposition as the Constitution contemplates.

As early as 1806, President Jefferson, foreseeing the then distant payment of the national debt, repeatedly and earnestly submitted to Congress the necessity of retaining discriminating duties upon foreign fabrics to protect domestic manufactures; and advised the application of the consequently inevitable surplus revenues to the great national purposes of education and internal improvement. This policy has been relinquished; whether for good or for evil

[d] U. S. Const. art. 4, § 3, clause 2.

it is yet, perhaps, too early to determine; and education and internal improvements are now regarded as falling within the peculiar responsibilities of the States. The Federal Government, in 1833, acquiesced in an importunate demand of South Carolina, and so far suppressed imposts upon foreign luxuries that the revenues from that source are not merely inadequate to the protection of domestic manufactures, but are insufficient for the ordinary expenses of the government in a season of peace, and while it seeks to pursue a course of studied economy. And yet our sister State, in a manner scarcely less earnest than before, insists now that the General Government shall spend the patrimony of the States in order to reduce still lower the duties upon luxuries imported for the use of the rich, who ought to contribute most abundantly to the support of the government.

The policy, established by the law which South Carolina repudiates, has been uniformly advocated by this State. It was proposed by the illustrious Clinton, in 1827. President Jackson announced it to Congress, in 1829, by declaring that imposts of protection would necessarily be continued for a long time; and submitting that the most safe, just and federal disposition of the surplus revenues would be an appropriation of them to the several States. The then Governor of New York responded to the recommendation, in 1830 and in 1831, and no dissent was expressed by the Legislature. When the President subsequently vetoed a bill for such an appropriation of the avails of the public lands, a resolution of approval of that proceeding, which hastily passed one branch of the Legislature, failed to receive the sanction of the other. The Assembly, in 1839, with much unanimity, declared in favor of a distribution; and in 1840 and 1841, I had the honor to transmit legislative instructions to our Representatives in Congress.

Having always approved and often recommended such a measure, I cannot commend the views of South Carolina. On the contrary I ask you to uphold the law. First, because it constitutes the basis upon which a superstructure of discriminating imposts upon foreign luxuries, for defraying the expenses of the government and protecting American industry must be re-constructed and maintained, so long as our commerce encounters a similar system in other countries. Secondly, because the grounds assumed by South Carolina are not more available for rescinding this distribution law of 1841, than for repealing what is called the deposit law of 1836; and thus depriving our system of universal education, at once, of its endowments and its efficiency. Thirdly, because the revenues to be derived by this State from the national domain, under the law, are now important to sustain our credit and avert taxation; and it will be henceforth invaluable, and constantly augmenting resources for extending the benefits of internal improvement to every portion of our fellow-citizens. And fourthly, because the revenues to be derived by other States are necessary means for their restoring their currency, credit and prosperity, which have been exhausted in generous efforts for education and internal improvement; and those means judiciously applied, with the fostering aid of Congress and the right sympathy of this State, will enable the embarrassed States to relieve the people and to complete their public works; results in which this State has an interest too important to be neglected, and too obvious to need exposition. I should not perform my whole duty on this occasion if I did not solicit your efforts to obtain such a modification of the law in question as would continue it in force, notwithstanding the duties upon foreign goods may be raised above the standard of twenty per centum.

WILLIAM H. SEWARD."

For the South Carolina resolutions See Senate Document No. 52.

February 24. To the Assembly: Transmitting resolutions adopted by the Legislature of New Jersey, favoring a protective tariff.

February 24. To the Assembly: Transmitting resolutions adopted by the Legislature of Rhode Island, favoring a uniform date for the election of President and Vice-President.

February 28. To the Assembly:

Memorandum on approval of a bill entitled "An act for the repeal of the New York City Registry Law."

"The act which thus becomes a law, obviously designs to preserve those admirable provisions of former statutes, which require that the wards of the city of New York shall be divided into convenient election districts, and limits the period for holding elections in that city to one day. But if I do not err, the present act, has the effect to abolish the offices of commissioners of registry; while it does not transfer to any existing authority the duties and powers of those officers to revise and alter the boundaries of election districts once in three years, and oftener if necessary, and to appoint the time and place for holding the election in each district. The present law does not provide, as former statutes did, for filling vacancies in the office of inspector of elections, occasioned by death, resignation, or removal from the districts; nor does it declare that the persons who shall be appointed to that office by the common council, shall be inhabitants of their respective districts. Prior enactments remaining in force, or revived by the present act, may supply some of these defects; but others seem to require direct legislation. The difficulty which attends the perfecting of details of laws for regulating elections is so well known, and at the same time the importance of leaving nothing in such cases for doubt or error is so fully appreciated, that I am

sure I shall be indulged in directing your attention to the points now presented, and suggesting that they may be worthy of consideration in the general revision of the election laws in which the Legislature is now engaged."

This bill became chapter 56, passed February 28.

March 8. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *March* 8, 1842.

"The Congress of the United States, previously to the adoption of the Federal Constitution, passed a resolution requesting the State of New York to erect a monument to the memory of Nicholas Herkimer, a patriot general who died of wounds received in the battle of Oriskany, on the sixth of August, 1777. The expense of the monument was fixed at five hundred dollars, to be paid out of the treasury of the Confederation. This resolution was forgotten in the excitement of the revolutionary conflicts, and remains to this day unexecuted. The descendants of General Herkimer, jointly cherishing his fame, called my attention to the resolution more than a year ago, expressing a desire that it might even at this late period, be carried into effect. I thereupon addressed a communication to the then Secretary of the Treasury, inquiring whether the money so appropriated would now be paid. The Secretary replied that it would be necessary to apply to Congress; but the session was then too far advanced to engage the consideration of the national legislature. The descendants of General Herkimer have again called my attention to the subject. After some reflection, it seems to me that Congress might reasonably expect the people of this State to express their present appreciation of the services of the deceased, and their willingness to concur now in paying the long deferred tribute to his memory. Time, I am sure, has only increased the affectionate veneration of the people of this State for the

memory of Herkimer, one of the bravest of her sons who fell in the cause of American independence. I hope, therefore, that the Legislature will instruct our Senators and Representatives to bring the subject to the consideration of Congress.

The pecuniary appropriation required is in every view unimportant to this State and to the descendants of the deceased. A more costly monument could be erected by either the one or the other without inconvenience; but such a monument would not be what the Revolutionary Congress designed, a memorial of the gratitude of the American people. Such a memorial, although it might cost even less than the small sum appropriated, would be more honorable to the memory of the patriot than a golden statue.

WILLIAM H. SEWARD."

March 14. To the Senate:

"EXECUTIVE CHAMBER,
March 14th, 1842.

"I am requested by the Senate to inform them concerning the progress of the Geological Survey; whether any and how much money remains unexpended; whether any contracts have been entered into, or orders given beyond the amount so appropriated; whether there are moneys due to Geologists, or to any other person or persons concerned in the survey, or for printing or engraving for the same; what sum will be required to print the final report of the Geologists, with the necessary engravings and illustrations; and whether any plan has been matured for the purpose; and to communicate such other facts in relation to these matters as I may deem useful to the Legislature.

The Governor was authorized and directed by a law passed in 1836, (Laws of 1836, chap. 142) to employ a suitable number of competent persons to make, under his direction, an accurate and complete geological survey of the State, with proper maps and diagrams, and a full and sci-

entific description of the rocks, soils and minerals of the State; and of its botanical and zoological productions, together with specimens of the same. It was further directed, that such maps, diagrams and specimens should be placed in the State Library, and that similar specimens should be committed to such of the literary institutions of the State, as the Secretary of State should designate. The act appropriated $26,000 annually for four years, and directed that the persons who should be employed should annually report to the Legislature.

My predecessor divided the survey into departments, and committed them to eminent scientific persons as follows:

A botanical department, under the superintendence of John Torrey, of the city of New York, whose annual allowances for himself, for assistance and expenditures have been equal to. $2,300.00

A mineralogical department under Lewis C. Beck, of New York, with annual allowances amounting to $2,550.00

A zoological department committed to James E. De Kay, with yearly allowances of..... $2,600.00

A palaeontological department, at the head of which was placed Timothy A. Conrad, of Pennsylvania, with allowances equal to..... $1,800.00

A geological department dividing the State into four districts. In this department were employed:

William M. Mather, of Ohio, for the first district, with allowances amounting to..... $2,600.00

Ebenezer Emmons, of Albany, for the second district, with allowances equal to..... $2,660.00

Lardner Vanuxem for the third district, with allowances equal to..... $2,600.00

And James Hall, of Albany, for the fourth district, with a salary and other allowances amounting to $2,600.00

These persons were employed for four years, commencing on the first of July, 1836, within which time the survey was expected to be completed. It was contemplated that the surplus remaining after paying the expenses of the survey, would in part defray the cost of publication of the final report. The Geologists were directed to take drawings and views of all important scenery and geological sections, animals and plants, and organic remains.

The system thus adopted has been continued without any change of the persons employed, or of the principles established. The Geologists have annually reported to the Legislature, except at the present session having been engaged in preparing their final reports. The expense of the field survey during the four years ending on the first day of July, 1840, it is now understood, was $72,982.12; but for the reasons hereafter mentioned, it was then supposed to have been much less than that sum. In that year, the Geologists made known to me, that they could not complete the field duties of the survey within the four years assigned for that purpose, and asked me to extend the time allowed them one year and six months. But as this would consume a large portion of the fund that had been set apart for publishing the final report, I declined acceding to the request; and they thereupon submitted the subject to the Legislature, who passed a law authorizing and requiring the Governor to continue the survey until the first of January, 1842, if it could be done without exceeding the appropriation of $104,000.

The survey was closed on the 1st of January last, and is believed to have been faithfully executed, and to have been as complete as could have been made within the time allowed for the purpose. There have been collected eight suites; one of which, designed to be retained by the State, contains about 20.000 specimens, and is now being transferred to the Geological Museum (old State Hall); and the

others, containing somewhat smaller numbers of specimens, are being arranged for distribution among the literary institutions of the State.

Dr. De Kay has prepared careful drawings of two thousand animals native in the State; and Dr. Torrey, an equally rich collection, illustrating our indigenous plants; Dr. Conrad has prepared more than 1,000 drawings of organic remains; and each of the five other persons engaged in the proper geological and mineralogical departments has prepared maps, views and sections necessary to exhibit very fully the formation of the territory which he has examined. The final reports are in progress, and it is believed may be completed within the period of eighteen months. The expense of the field survey thus continued five years and six months, amounted to $101,670, leaving no considerable sum to defray the expenses of publication.

In May, 1840, it became important to determine upon a plan of publication, and a consultation on that subject was held with all the Geologists. It was determined that the final report should be printed in a quarto form, in new small pica type, upon paper of medium size and superior quality, and of American manufacture, with such necessary maps and illustrations by steel and copper engravings, lithographs and wood cuts, as the liberality of the Legislature would permit; and so that the work should exhibit a complete natural history of the State, and be a monument of the present perfection of the arts in our country. It was further determined that 3,000 copies of the work should be printed of which it was supposed that the State would require some number for its various institutions and for exchange; and that the residue could be sold at prices sufficient to reimburse the expense of publication. No further details of the plan could be settled, because neither the extent of the reports, nor the number nor cost of the necessary illustrations could then be ascertained, nor could it be

known what sum would be allowed by the Legislature for defraying the expense of publication.

On the first of May last, with a view to exhibit to the Legislature at its present session a portion of the publication, the Geologists were directed to prepare their reports for the press, with as much despatch as possible; and inasmuch as work to be done in executing the illustrations would require much more time than the mere executing of the letter-press, measures were taken to have that department prosecuted with energy, but not to exceed the funds appropriated. The accounts exhibited at the Comptroller's office at that time erroneously showed that about $71,000 had been expended, and it was of course supposed that there remained of the appropriation a balance equal to about $33,000, of which there would be required to pay the Geologists' three quarters salary and allowances, estimated at about $13,500, and that there would be left applicable to the expenses of publication, a sum of about $19,500. Thereupon a contract was made with Packard, Gavit and Company, of Albany, engravers, for executing the map, and such botanical and zoological illustrations on steel, copper and stone, as should be furnished by Dr. De Kay and Dr. Torrey, but with such limitations as would enable me to keep the expense within the supposed amount in the treasury, and to extend the operations under the contract, if authorized by a further appropriation at the present session.

A part of Dr. Beck's report was in last delivered to the State printer with directions to proceed in printing the same without delay; and it was my intention to prosecute the publication as far as the funds remaining in the treasury would permit. Packard, Gavit & Company, after having partially executed their contract, failed and made an assignment in October last. Their assignees very promptly proceeded under my directions to close the affairs under the contract; and to complete the portion of the work

actually commenced and remaining unfinished, and delivered to me all the plates, paper and engravings remaining in the hands of the principals, and the same were deposited in the office of the Comptroller where they now remain. At the same time, I agreed with George Endicott of the city of New York, upon the terms of a contract under which he was to execute in lithographs, all that remained unperformed under the previous contract with Packard, Gavit and Company. The agreement with Mr. Endicott was reduced to writing, ready to be executed, and he was proceeding in the performance of the stipulations on his part; and the State printer had begun to print Dr. Beck's portion of the report, when a draft that I had drawn in favor of the assignees of Packard, Gavit and Company, for $504.90, was refused payment at the Comptroller's office on the 17th day of November last, with the following explanation.

The Comptroller stated that the appropriation had been inadvertently overdrawn; that on examination he found an account opened upon the general ledger, by one of his predecessors under date of second of October, 1837, under the head of "Geological Survey," which he had until the said 17th of November, 1841, taken for granted, included the whole of the account with the appropriation; that the payments appearing under that head, to the close of the last fiscal year, amounted in the aggregate to $80,404.40; and the payments from the 30th of September last, to the 17th of November, now equal to $8,249.50, making an aggregate of $88,653.90, which deducted from $104,000, the amount of the appropriation, would have left a balance, unexpended of $15,346.10, (which was quite sufficient for all of the work contemplated to have been performed previously to the 1st of January, 1842.) But the Comptroller had now accidentally discovered an entry of advances to the late Governor, William L. Marcy, for appropriation for a Geological survey, balanced and fully accounted for, but which the

former Comptroller had omitted to carry into the before mentioned general account or to transfer to what seemed to be its appropriate place, upon the general ledger. The amount of the overlooked advances was $16,500; and added to the moneys already paid out of the treasury, made an aggregate sum of $105,153.90, showing the appropriation overdrawn by the amount of $1,153.90. From this sum, however, there should be deducted $925.10, being the balance on deposit, to the credit of the Geological survey account, in the Commercial Bank, showing an excess of expenditures for the survey over the appropriation of $228.80.

As soon as these facts were made known to me, I gave notice of them to the Geologists, informing them that their salaries falling due on the 30th of December, could not be paid, and at the same time informed the assignees of Packard, Gavit & Co., that their draft could not be paid. I at the same time informed Mr. Endicott that I could not execute the contract with him, and made known, both to him and the State Printer, that the fund was exhausted, and that no further payments could be made to them, for want of legal authority. All these parties answered that they should proceed in their respective duties, relying upon the justice of the Legislature.

It is difficult to estimate the cost of the publication, since the extent of the work and the number and description of embellishments, and illustrations which will be required, are only conjectured by the Geologists. They show that the letter press of the work will extend to 3,200 quarto pages, of the small type which has been adopted.

The composition of the work, at the rate charged by the State Printer, for what has been done, would be for each volume, $420; for the 8 volumes.....	$3,360.00
The press work and paper, at the same rate, for each volume $2,028; for the 8 volumes....	16,224.00

Pressing each volume, 3000 copies, $175; for the 8 volumes	$1,400.00
Folding the same, $187.50; for the 8 volumes	1,500.00
	$28,084.00

The cost of the map and illustrations already prepared, is $16,789

The expense of each lithograph plate and 3,000 impressions, including cost of the paper, is $72. The Geologists report that they will require 325 plates in addition to those already completed. The further expense of the publication will depend altogether upon the extent to which the Legislature shall see fit to permit the multiplication of the illustrations. The letter of Mr. Endicott will explain this part of the subject.

There remains unpaid to the Geologists, their salaries and allowances, for one quarter of the year, ending on the 31st day of December last	$4,500.00
Due to the assignees of Packard, Gavit & Co.	504.90
To be paid to the Geologists for arranging their collections estimated at	2,000.00
	$51,877.90
Deduct amount already paid on account of publication	6,514.00
Leaves the amount required for completing the publication, without further illustrations, at	$45,363.90

The work could not be completed in less than two years, and from the apprehended delay of the Palaeontological report, may require three years. It will be contained in eight

volumes of 400 pages each, exclusive of illustrations. Two or three volumes might be conveniently printed in a year. It remains for the Legislature to determine whether the publication shall be made in behalf of the State. If such a course is pursued, authority should be given to secure the copyright. If a different course should be thought prudent, it would seem necessary to defer the publication until all the labors of the Geologists are completed; or to authorize a contract for the sale of the copyright, on such conditions as shall be deemed expedient. The latter course would be most simple, and perhaps most safe; while the publication on the plan first mentioned, is recommended by the considerations that the State would have better security for the execution of the work in the most suitable manner, and upon such terms as would secure its more certain and extensive circulation throughout the State, and a more general diffusion of the benefits of the survey. And all scientific persons agree with the Geologists, that if the work be published in a proper manner, the sale of 2,000 copies would reimburse the State. It is believed that such a contract could be made. The following are all the existing accounts against the State on account of the survey, and they were made under the circumstances before set forth:

To the Geologists one quarter's salary and allowances	$4,500.00
To the Geologists at the same rates for the time already employed by them in arranging their collections, say	500.00
To the assignees of Packard, Gavit & Co., for work performed	504.90
To George Endicott, for work performed	3,750.00
To the State Printer, " "	3,587.00
	$12,841.90

But the State Printer's account includes $1,300 for cost of paper not yet used, and which would belong to the State when his account should be paid.

I send to the Senate a copy containing 236 pages, being so much of the final report as has been printed, together with a copy of each plate, lithograph and wood cut that has been made; a copy of the contract heretofore made with Packard, Gavit & Co.; a copy of the contract which was proposed to be made with Mr. Endicott; a statement from the Comptroller's office of all the moneys which have been paid; a copy of the terms agreed upon by the State Printer, and the estimate of the expense of the publication submitted to me by the Geologists; a copy of the Comptroller's statement in regard to the fund, and a copy of the explanatory letter from Mr. Endicott. [See note 2.]

WILLIAM H. SEWARD."

March 14. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *March* 14, 1842.

"The letter of the president of the New York and Erie Railroad Company herewith transmitted, shows that if legislative aid is longer withheld from the association, it must desist from prosecuting its great enterprise; the laborers employed must be discharged; the interest on the three million state loan, which will accrue on the first of April next, will remain unpaid; the contingent debt will fall immediately upon the treasury; the capital invested in the enterprise by our fellow citizens will be lost; the New York and Erie railroad in its scarcely half-completed condition be exposed to auction at the suit of the State; and the just expectation of immeasurable benefits to result from the enterprise will be suddenly and hopelessly disappointed.

This information cannot excite surprise. No one could have expected that the road in its unfinished state could produce capital or even revenues; and the association acted wisely in devoting all their means to its prosecution, relying upon the justice of the State and the liberality of their fellow citizens for such additional resources as should be necessary to secure its completion.

Respectfully referring to the suggestion made in my annual message in view of this crisis, I will only add that no measure less favorable to the enterprise, than the past policy of the State, could now be effectual, while none, in my judgment, that would involve any sacrifice on the part of the State, is necessary. Nevertheless, the responsibility of conducting the enterprise to an early consummation seems to me to rest not with the New York and Erie Railroad Company, but upon the State. The association can only be regarded by the people as an agent of the Legislature; and while like all other agents, it ought to be held to a just accountability, the State cannot discharge itself from responsibility by pleading the failure of its agent, whether with or without excuse, to perform its duties, or meet the expectations of the Legislature. [See note 17.]

WILLIAM H. SEWARD."

March 24. To the Senate:

Veto of a bill entitled "An act to change the manner of appointing bank commissioners, and to reduce the number thereof."

"It proposes that the Commissioners shall hereafter be appointed by the Legislature. In the present mode of appointment, the Governor nominates those officers, the Senate advises and approves or disallows, while the Assembly has no voice. The proposed change would, therefore, relieve the Executive of a responsibility devolved upon him by existing laws, and augment the official patronage of both Houses of the Legislature.

Previously to 1821, the appointing power was chiefly vested in a council of appointment, which consisted of the Governor and one Senator from each district, appointed by the Assembly.[e] The Governor had a voice in the council; the Assembly acted only indirectly; and Senators, not members of the council, had no agency in appointments. That mode of proceeding was, therefore, more executive and less exclusively legislative than the form proposed in the present bill. Yet, the mingling of political patronage with legislative duties in that very guarded manner, became so odious, and its consequences so intolerable, that in framing the new Constitution, the council of appointment was abolished with great unanimity. The Legislature was charged with the responsibility of appointing only Senators in Congress, the Commissary General, and several high administration officers. Many local offices were made elective; the judiciary and local authorities were required to fill others; and the residuary appointing power was confided to the Governor, acting by and with the advice and consent of the Senate. The Constitution, jealous of mingling personal and political interests with legislation, declared that no member of either House should receive any civil appointment from the Governor and Senate, or from the legislature.[f] At that period, electors of President and Vice-President of the United States, Regents of the University, and Canal Commissioners, received their appointment from the Legislature. Within the twenty years which have elapsed since the Constitution was adopted, the Legislature has, in obedience to the expressed public will, diminished its appointing power, by resigning into the hands of the people the choice of electors of President and Vice-President, and has not until now thought that its political power and official patronage ought to be increased.

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[e] Const. 1777, § 23.

[f] Const. 1821, art. 1, § 10.

It is not necessary to insist that the power of appointing Bank Commissioners ought always to remain where it is now vested; on the contrary, my present duty will be performed, if it shall appear that the present mode of appointment is preferable to that which the Legislature proposes.

When an appointing agent must be introduced between the people and a public trust, that agent, if there be no special reason to the contrary, ought to be selected from the department to which his duties relate, should be held rigidly responsible, and be secured as far as possible against improper and corrupting appliances.

It belongs to the Legislature to make laws, but not to execute them. It is the constitutional duty of the Governor, and his especial responsibility, to 'expedite all such measures as may be resolved upon by the Legislature,' and to take care that the laws are faithfully executed.'[ε] The power of appointing and removing agents to enforce the laws, as far as it is vested in the Governor, is incidental to his office as a magistrate, while such a power is in no manner a legislative attribute. The government in which the same agent makes the laws and executes them directly or by subordinate and dependent agents, is not a republic, nor a democracy, but an oligarchy, or a despotism, where the union of legislative and executive functions impairs the equal, rightful, and salutary exercise of both, and invariably results in corruption of the governors and oppression of the governed.

In making appointments, the Legislature is not amenable to any tribunal, nor are its members collectively accountable to the people. Responsibility is divided among one hundred and sixty persons, each of whom answers after a lapse of one, two, three, or four years, only to local constituents, and not to the whole people; while the exercise of the power either prejudices the popular discussion

ε Const. 1821, art. 3, § 4.

of purely legislative measures, or is forgotten in that discussion, and fails to receive due consideration.

The Governor, on the contrary, is responsible to the Legislature and the Judiciary, in the Court for the Trial of Impeachments, and answers biennially in the elections to every citizen of the State. He must answer for every error into which he may fall, and for every injury, intentional or otherwise, he may inflict; and every citizen he may offend meets him at the polls. With only the limited legislative powers of recommending measures, and insisting that any bill which he may disapprove shall not become a law without the assent of two-thirds of the members of both Houses;* and having only a right of nomination in appointments to offices chiefly judicial and ministerial; with very restricted power of removal, he is not only held more rigidly responsible than the Legislature, but is unprotected and unsupported in performing duties as comprehensive as the interests of the State, except as he may deserve and secure the confidence and favor of the people. The Legislature has long since, whether wisely or unwisely, it is not now necessary to discuss, converted the department of commerce, which constitutes banking, into a monopoly granted by charters to favored corporations, and to associations complying with terms prescribed by law; has delegated to the banks the great franchise of supplying a currency, and has established laws for their regulation, which, I may be permitted here to repeat, are not yet sufficiently rigid to prevent evasions, frauds, injustice and oppression. It is the peculiar duty of the Bank Commissioners to enforce these laws. Surely the immediate supervision of the Commissioners, if not a magisterial, is in no sense a legislative duty. Although, as the great conservator of the public welfare, the Legislature may inquire how not only the Commissioners, but also the Governor, and all magisterial, ministerial, and even judicial officers, per-

* Const. 1821, art. 1, § 12; art. 3. § 4.

form their duties, and whenever it is necessary, may and ought to put forth so much of its almost unlimited power as may be required to correct any abuses which may be discovered. Nevertheless, it is by a distribution of proper responsibilities among the several departments, and their regular action, without mutual encroachment, that good laws are secured, truly expounded, and faithfully executed.

To separate the treasury from the Executive Department, the purse from the sword, our Constitution, unlike that of the United States, devolves upon the Legislature, exclusively of the Executive, the appointment not only of the Commissary General, who has custody of the military stores, but also of the Comptroller, the Treasurer, the Secretary of State, the Attorney General, and the Surveyor General, who constitute the fiscal administration.[h] There is an unavoidable communication between that fiscal administration and the banks; and the relation is not only mutually useful, but favorable also to the general prosperity, when their operations are neither hostile nor intermingled. The Bank Commissioners stand between the banks and the fiscal administration, conservatives of the rights and interests of the people; and acquire much independence from the manner of their appointment. The bill under review, proposes to transfer the power of appointing and removing those officers to the same hands which confer the banking privileges and the fiscal trusts, and would thus bring the banks and the treasury into close conjunction with each other and with the Legislature. Such a conjunction cannot be contemplated without apprehensions for the public credit, the public morals, and the successful industry of our fellow citizens. Our sister State, Pennsylvania, has tried such a connection. She has exhausted the banks by exacting pecuniary returns for improvident grants, and for licensing violations of contracts, and the fruits are seen in her impaired credit, and her banks sink-

[h] Const. 1821, art. 4, § 6.

ing one after another into hopeless insolvency. Even in this State, the banks and the fiscal administration are sufficiently convergent; since, on the one hand, the treasury borrows the Safety Fund, (the property of the banks and the reliance of the people,) and the management of the free banks is assigned to a bureau in the office of the Comptroller; and on the other, very large amounts of public money have been entrusted to banks, several of which are insolvent, and others embarrassed, while in the Legislature questions of finance are seldom discussed without sufficient regard to the opinions and interests of associated capitalists. The Bank Commissioners have not only extensive powers in regulating the banks, but are the accustomed organ of communication between those institutions and the Legislature.

The designation of persons for those offices is so obviously interesting to the banks, that for ten years they were allowed to choose two-thirds of the commission. The bill under consideration would invite the banks into the chambers of the Senate and Assembly; and since it proposes annual appointments, that visitation would be as regular as the assembling of the Legislature. Experience, too early to be despised, and too recent to be forgotten, warns us against such a proceeding. Our judicial records and legislative journals bear humiliating testimony of the corruption of representatives of the people; and it cannot be forgotten that the Governor once prorogued the Legislature, to defeat the undue influence of applicants for banking privileges; that the people, for a like purpose, abridged the legislative power to create corporations: and that it was subsequently found necessary to open the banking monopoly by a general law, authorizing the formation of unincorporated banking associations. Suspicions of yielding to such appliances has not yet reached the Executive authority of the State; and if ever the confidence which an enlightened people are accustomed to repose in

that authority, shall prove to have been misplaced, they will have prompt and effectual vindication in the legal conviction and expulsion of so unworthy a magistrate, and the enduring infamy which will rest upon his name.

These views induce me to suppose that the proposed change, so far from being beneficial, would be deeply injurious to the public welfare, and less harmonious with the spirit of the Constitution than the existing law. They are, moreover, such considerations as I have supposed may have governed the legislative representatives of the people in 1827, in 1837, and in 1840, in devolving upon other agents the responsibilities which the present Legislature is not unwilling to assume; and I respectfully submit them as my objections to the bill which is herewith returned to the Senate.

While the bill proposes that the first selection of Commissioners shall be made on the first Monday in April next, it also provides that the legislative mode of appointment shall be permanent. It would, therefore, seem disrespectful to the Legislature to infer, that the measure had any special application to the persons now in office. If, however, such application had been intended, it might properly have been observed that there were ample remedies by impeachment, and by summary executive removal, and that either of these remedies would be obviously more just as well as more expedient, than to make an unnecessary and injurious alteration of the law to accomplish a special and temporary purpose.

I do not discuss the provisions proposing to limit the official term of the Commissioners to one year, and to abolish the office of one of those agents; because, whatever may be the merits of those provisions, they must now abide the disposition of the more important subject with which they are connected. I may remark, however, that some time is necessary to become acquainted with the condition of one hundred and fifty-three banks, and with the value of

their property, and the solvency or insolvency of their debtors; that some experience is useful in discharging so high, so delicate, and so important a trust; that a crisis when banks in most of the other States are suspended, if not insolvent, and when our own moneyed institutions are affected by the financial embarrassments of the country, is not the most favorable time to relax a vigilant supervision, or to involve those institutions in such political controversies as are incident to all legislative appointments. Nor would the economy of abolishing the office of one of the Commissioners diminish the public charges, because the salaries of those officers are paid by the banks and not by the treasury; and even if those institutions justly complained of the expense of necessary supervision, it would seem wiser to reduce the compensation than the number of the Commissioners.

It is an occasion of sincere regret, that I am obliged to discuss the comparative fitness of a coordinate department of the government, and of that which has been assigned to me, to execute a high and important duty. I have endeavored, however, to consider the subject with reference to comprehensive and enduring principles, with a self-distrust which experience of public service only increases, and with a profound respect for the Legislature, that no difference of opinion arising in mutual efforts to promote the general welfare can diminish. Nevertheless I cannot deny my liability to be somewhat, although unconsciously, influenced by a jealous regard for the efficiency of the department in which I am more especially concerned; but I derive support under circumstances so embarrassing, from the consideration that firmness in maintaining the proper responsibilities of every department, is an obvious duty of all who are engaged in the public councils, and that undue concessions could not easily be retrieved, while even unreasonable pertinacity would not be deeply injurious to the public welfare, because it must ultimately be unavail-

ing; and if other reliance were necessary, it would be supplied by the reflection that the high trust I may thus seem to defend too earnestly, is soon, with my own grateful consent to have no more interest for me than for every other citizen."

The bill was not passed over the veto.

March 25. To the Senate:

"EXECUTIVE CHAMBER,
March 25, 1842.

"The moneys appropriated by the act of May 2, 1839, entitled 'An act to appoint an agent to procure and transcribe documents in Europe, relative to the Colonial history of this State,' are nearly exhausted.

It is already known to the Legislature that an application for permission to search the archives of the British Government remains unanswered. Should it be granted the agent will be without adequate funds to prosecute his examination.

I respectfully submit for the consideration of the Legislature, the expediency of making such contingent provision for the agency, as, under the circumstances, would seem to be necessary, if its objects are to be accomplished. [See note 3.]

WILLIAM H. SEWARD."

March 26. To the Assembly: Transmitting a report of the board of officers of the 59th Brigade of Infantry.

March 29. To the Assembly:

Memorandum on approval of a bill entitled "An act to provide for paying the debt and preserving the credit of the State."

"The chief provisions of the act entitled 'An act to provide for paying the debt and preserving the credit of the State,' are the imposition of a tax, and an indefinite

suspension of all the works of internal improvement. These important measures are contrary to the policy which I have on all proper occasions recommended, and to which, with the most respectful deference to the Legislature, I am obliged by convictions of public duty to adhere. But the question is of a nature purely legislative, and the measures proposed have not only the approbation of the fiscal administration, (from which the Executive is constitutionally separated,) but are represented by that administration to be absolutely and urgently necessary. Although dissenting from these opinions, yet believing that the Executive could not, consistently with the spirit of the Constitution, attempt to control the deliberate action of the Legislature in regard to such measures under such circumstances, I have given my assent to the bill, and it has become a law."

This bill became chapter 114, passed March 29. [See note 16.]

March 31. To the Senate:

Veto of a bill entitled "An act to repeal 'an act for the better organization of criminal courts in the city of New York,' passed May 14th, 1840."

"The bill entitled 'An act to repeal an act for the better organization of criminal courts in the city of New York, passed May 14th, 1840,' imposes upon me the duty of reconsidering my approval of that law. In the absence of information which would lead towards the conclusion at which the Legislature has arrived, I cheerfully resort to the report of the Assembly's learned judiciary committee for a guide to the grounds to be examined.

The repeal is argued from a strong repugnance to the law, manifested by the people of New York as represented in their city councils, an aversion so great that those councils have refused to recognize the constitutionality of the act; have refused also to pay the salaries of the judges, and

are pursuing an angry litigation with those officers; while the aldermen constituting the higher council, individually persist, in defiance of the law, in taking seats upon the bench of the court of general sessions, under circumstances which create apprehensions of unseemly collision between themselves and the court. The Supreme Court has legitimately reviewed the act and affirmed its constitutionality. The report, however, claims that the Legislature is not bound by this decision, but waives a discussion of it. In these circumstances, the Executive must be allowed to confide in the adjudication, since without questioning the independence of the Legislature, he regards himself as bound to support the Constitution, not with a privilege of vague and arbitrary construction, but as it is expounded by Supreme Judicial authority.

Shall we then repeal a constitutional law because a subordinate municipal council denies its constitutionality, or because persons whom the act divests of judicial power angrily contend with those to whom that power is transferred? Would not such a proceeding be an abandonment of the Constitution and of the judiciary, and even a renunciation of legislative authority? And if a proceeding apparently so injurious to republican institutions and laws were necessary, could we, without a departure from the spirit of constitutional law, omit to compensate the displaced judges for the two years of actual service they have rendered under commissions as legal and perfect as any other derived from the people?

Nor can the supposed insubordination of the municipal councils of New York compromit that enlightened metropolis. Those councils can bind their constituents only by legal acts, and even these may be and often are disapproved. Indeed, the people of that city are not excelled by citizens in any other part of the State in enlightened and confiding devotion to the Constitution and laws.

The act of 1840 is represented in the report as an oppres-

sive grievance, for the reasons that the public confidence, which such a court as the general sessions ought to enjoy, would be more naturally and readily conceded to a tribunal in which there should be associated with a learned and permanent presiding judge, two persons drawn from the common walks of life and annually responsible in popular elections, than to the court as now constituted; and the simplicity of the principles of criminal jurisprudence renders it unnecessary and improper to have more legal experience on the bench than is secured in the appointment of the recorder; that long continuance in office renders a judge susceptible of prejudices against accused persons and induces severity in awarding punishment; and that this supposed tendency of judicial experience, operating in the court through the recorder, might be corrected by the association of aldermen.

This argument would seem to be answered by the considerations, that all the faults imputed to that court or its judges are altogether opposite to the rigor and sternness thus deprecated; that the law which is proposed to be repealed does not exclude as judges persons of any condition in life, nor require a superfluity of learning or experience; and that the only reliable confidence which any court can enjoy must result from the manner, not so much of its constitution as of its performing its functions, and from its efficiency in protecting the lives, liberty, property and happiness of the people.

An union of incongruous functions seldom fails to produce negligence and unfaithfulness in their exercise. It would seem that judicial duties would be more assiduously and discreetly performed by persons expressly assigned, or at proper seasons exclusively devoted to them, than by individuals in rotation, who are charged simultaneously with fiscal, magisterial and legislative responsibilities so comprehensive as those of the municipal government of New York. But we have the aid of experience in reviewing

the decision which the Legislature of 1840 made upon induction only. That act originated in a complaint made by a presiding judge of great experience in the court of sessions, to the common council in 1836, showing the inadequacy of the tribunal to maintain a complete and successful administration of justice. A grand jury and a select committee of the common council renewed the complaint in 1840, and the law was passed to correct the great evil thus presented. There were 1875 trials, 7675 criminal cases, 639 convictions, and 7135 persons admitted to bail in the courts of general and special sessions of New York in 1838, and 1839, while in 1840 and 1841 there were 2791 trials, and only 4723 cases, 739 convictions, and only 4932 recognizances. The greater number of trials and smaller number of cases, and the increase of convictions and diminution of recognizances seem to show, if not the excellence of the court, at least the superiority of its present over its former organization.

It is again urged that the act of 1840 is a grievance requiring legislative redress, because the common council and the legislative representatives of the city opposed its enactment. While it is admitted that this objection deserves a serious examination by the Legislature, the respect due from the executive to that body obliges me to suppose that a minority is not harshly or unjustly overruled there, and that local objections are not disallowed except from some public necessity, or to promote the general good.

The Constitution declares that the Governor and Senate shall appoint all judicial officers except justices of the peace, and that judges of the county courts shall hold their offices five years, if not sooner legally removed.[1] The court, as at present organized, is constituted in conformity with the Constitution in these respects, while a restoration of the aldermen to the bench, as proposed by the bill before me, would be as manifestly in conflict with those provisions.

[1] Const. 1821, art. 4, § 7; art. 5, § 6.

But it is contended that certain reservations in the Constitution exempt the court of general sessions of New York from those constitutional requirements, and so the Supreme Court has decided. That adjudication has nevertheless been challenged by the Attorney General, and the Court for the correction of Errors on a hearing of the case, being equally divided, failed to decide the question. The same grave question is now upon information before that court.* While we yield entire respect and submission to the adjudication of the Supreme Court, we must at the same time foresee that if it should be revised, and the law of 1840 should, in the meantime, be repealed, the city and county of New York, containing about one-eighth of the population of the State crowded within a territory of twenty-two square miles, would be without a criminal tribunal higher than a court of special sessions. Under these circumstances, respect for our highest judicial tribunal and prudential considerations relating to the public welfare, persuade me that even if the law of 1840 ought ultimately to be repealed, yet it should nevertheless be left in force until after the decision of the Court for the Correction of Errors shall be known. I am reluctantly obliged for this and the other objections which have been set forth, to return the bill for the further consideration of the Legislature."

The bill was not passed over the veto.

April 1. To the Senate:

"EXECUTIVE CHAMBER,
March 30th, 1842.

"I lay before the Legislature a communication which has just been received from J. Romeyn Brodhead, Esq. agent for this State at London, informing me that a partial assent has been yielded by the British government to

* See Purdy v. People, (1842) 4 Hill 384.

the application made by His Excellency the American minister, in behalf of this State, for permission to examine the archives of that government, for papers tending to illustrate our Colonial history; and raising a confident expectation that the objects of the agency may be fully accomplished. [See note 3.]

WILLIAM H. SEWARD."

The following correspondence was transmitted with the foregoing message.

a. Letter from Mr. Brodhead to Governor Seward:

LONDON, 3*d March*, 1842.

DEAR SIR.— On the 8th of February, Mr. Everett had an interview with Lord Aberdeen, in the course of which, he took occasion to draw his Lordship's attention to the pending application in behalf of the State of New York. His Lordship expressed himself favorably inclined towards facilitating researches in the British archives; but, added, that though it might not be possible, in this case, for the agent to furnish a particular list of the documents, copies of which he might wish to obtain; yet, that he thought that a general statement of their nature must be practicable. At Mr. Everett's suggestion, I accordingly prepared a statement of the kind proposed, comprising under several separate heads, as specific a detail of the objects of the agency as the nature of the case would allow, and as seemed to be desirable. This was transmitted by Mr. Everett, to Lord Aberdeen, in a note bearing date the 14th February. Copies of that note and of the statement, are herewith enclosed.

On the 23d February, Mr. Everett received an answer from the Foreign Office, a copy of which is also enclosed. It will be perceived that the permission at present given, is limited to an examination of these volumes, stated to contain a list of the Records of the State of New York. I

have accordingly been occupied in examinations of these books; but find that they relate, only, to the papers of the Board of Trade between the years 1703 and 1758. You are probably aware that the New York papers are deposited in three several offices:

1. The State Paper Office.
2. The Board of Trade; and,
3. The Privy Council Office.

And the hope is entertained, that permission will eventually be given to make researches in all. The papers contained in the State Paper Office, are understood to be the most valuable and interesting of all the Colonial Records.

From the examinations already made, I am led to believe that the mass of documents referred to in the list under inspection, is exceedingly voluminous; although, not having as yet been permitted to have access to the papers themselves, I cannot state more than my impression.

The charge for copies of papers, is 4d. (or 8 cents,) per folio of 72 words. At this rate, it will cost about $100 for 400 pages, supposing two folios and a half to be contained on a page.

I feel it to be my duty again to refer to the inadequacy of the present fund to the purposes of the agency. If it is the intention of the State to complete the work that has been undertaken, a further appropriation is absolutely indispensable. Any estimate, at present, of the amount that will be required for the expenses of copies of papers, must, of course, be conjectural. It may be, that a further appropriation of $3000, will suffice to cover everything; but I do not think I would be safe in naming any less sum than that as necessary, in case the permission be given to copy papers in the three offices above stated. The number of transcripts will, of course, depend upon the amount that may be at my disposal; and I may be allowed to express the hope, that as the State has undertaken the work of procuring materials for the illustration of its history, it will not ne-

glect to make the necessary provision for completely accomplishing the enterprise it has begun.

I am, dear sir, very respectfully,

Your obedient servant,

J. ROMEYN BRODHEAD.

His Excellency,
Governor SEWARD, Albany.

b. Letter from Edward Everett, American Minister, to Lord Aberdeen:

32 UPPER GROSVENOR STREET,
February 14, 1842.

MY LORD.—It was suggested by your Lordship, in our interview of the 8th instant, that though it might not be possible to furnish a specific list of the historical documents desired for the State of New York, yet that a general statement of their nature must be practicable, and would facilitate a decision on the pending application for permission to make copies. In pursuance of this suggestion, the agent commissioned by the State of New York has, at my request, prepared a statement of the kind proposed, which I have the honor herewith to transmit. It is believed to be as specific as the nature of the case admits.

Having been instructed by the President of the United States, to ask the favorable consideration of Her Majesty's government to this application of the State of New York, I beg leave to observe, that Mr. Brodhead, the agent of the State, is now, and for several weeks has been, awaiting the result of his application with great personal inconvenience. The synopsis herewith transmitted proves, as far as such a point can be proved, the purely literary character and object of his commission, and will, I trust, remove whatever hesitation may have existed in reference to a compliance with his request. I venture to hope, that the liberality exercised by your Lordship in former similar cases, will not be withheld in this.

I deem it proper again to intimate, that although it is made my duty, by the instructions of the President, to support the application of the State of New York, the government of the United States has no other concern in it than what proceeds from a respect to the wishes of that State, and a general interest in the promotion, in every proper way, of an undertaking so praiseworthy and useful as the illustration of the history of the country.

I have the honor to be,
With great consideration,
Your Lordship's obedt. servant,
EDWARD EVERETT.

The EARL OF ABERDEEN, &c. &c. &c.

Mr. J. R. Brodhead, commissioned by the government of the State of New York, as agent to procure and transcribe documents in Europe, relative to the Colonial History of that State, is desirous to examine and procure copies of all documents in the English archives relative to, or affecting the following points of inquiry in the history of the State of New York:

1. The discovery of the Bay of Manhattan, by Hendrick Hudson, in the year 1609. The voyage of Hudson was made in the service of the Dutch; but as he was stopped in England on his return to Amsterdam, there may perhaps exist documents in this country throwing light upon his discovery.

2. The alleged visit of Argal to Manhattan, in the year 1613, or thereabouts, to reduce the Colony into subjection to Virginia.

3. Instructions from the Governors of Virginia to their agents, respecting the Dutch occupation of New Netherland, and papers showing the extent of the patent of that Colony.

4. Instructions, or other papers from the government of

England, to their agents in Virginia and New England, in regard to the Dutch possessions in New Netherland.

5. Papers connected with questions of boundaries between the Dutch and English Colonies in North America.

6. Papers relating to the surrender of the Colony of New Netherland to the English, and instructions from the government here to their officers, including also the evidences of title of the Dutch.

7. Instructions from the Duke of York, and reports made to him, &c.

8. Reports and advices from the several Governors and other officers to the government of England, their instructions and commissions; and the correspondence between them and the ministry.

9. Proceedings of the Council and Legislature.

10. Accounts and papers relating to the State of the Colony from time to time, transmitted to England.

11. Documents relating to the boundaries between New York and Connecticut, and New Jersey, and Massachusetts.

12. Papers and documents relating to ecclesiastical affairs.

13. Those relating to military affairs.

14. Papers and documents relating to Indian affairs; the patents and Indian grants negotiated; the treaties with the Indian tribes; 'talks' of the Governors and chiefs, and all information connected with this subject. It is said that several volumes of records, including the transactions of the Indian commissioners for the Colony, from 1675 to 1751, and subsequent records relative to Indian affairs, were conveyed away by Sir John Johnson, or his agents.

15. Papers relating to grants of land and manorial rights.

16. Papers relating to jurisprudence; including the proceedings of the Privy Council in Cases of appeal, and in regard to all other matters relating to the Colony.

17. Circular letters from the Board of Trade and Plantations, and questions sent to the Governors; including all proceedings of the board relative to the Colony.

18. Answers of the Governor; reports of the state of the Colony; population, and other returns, and other documents communicated to the board.

19. Papers relating to disputes and differences with the other Colonies, and to the general intercourse between them.

20. Papers relating to the grievances alleged to be suffered by the Colonists, and proceedings of the British government relative thereto, including reports made to His Majesty, and the Council proceedings.

21. Papers relating to the commerce of the Colony.

22. Documents relative to the conduct and designs of the French, in regard to the Colony.

23. Documents in relation to the expeditions across the St. Lawrence, and to the posts upon Lake Ontario and the River Niagara.

24. The views of the English government as to the intercourse with Virginia, and diplomatic documents relating to the negotiations of Sir Dudley Carleton with the States-General upon this subject. The particulars above noticed are intended to include all documents and papers in the archives of Great Britain, (including the Privy Council and Board of Trade and Plantations proceedings,) relating to, or in any way affecting the history of the Colony of New York, between the years 1609 and 1776.

25. Documents, papers, reports, &c. relating to the period of the Revolutionary war, commencing with 1776, and extending down to the year 1783, when the treaty of peace was signed.

London, February, 1842.

c. Letter from Lord Aberdeen to Mr. Everett:

FOREIGN OFFICE,
February 23d, 1842.

SIR.—I have the honor to acknowledge the receipt of your letter of 14th instant, including a statement which Mr. Brodhead, the agent of the State of New York, has drawn up, showing the nature of the documents in the archives of Her Majesty's government, to which he wishes to have access, for the purpose of making copies of such of them as he may require for the literary work upon which he is engaged; and I have to acquaint you that directions have been given to the keeper of Her Majesty's State Papers, to allow Mr. Brodhead to have access to three volumes, containing a list of the records of the State of New York, which are in the custody of that officer.

When Mr. Brodhead has examined this list, if he will mark any papers therein mentioned, which he may wish to see, they shall be looked out; and if no objection appears to copies being placed in Mr. Brodhead's hands, the copies shall forthwith be made for his use.

I have the honor to be,
With high consideration, Sir,
Your most obedient, humble servant,
ABERDEEN.

EDWARD EVERETT, Ex. &c. &c. &c. &c.

April 5. To the Assembly: Transmitting resolutions adopted by several states as follows: Maine, relative to the public lands; Tennessee, in relation to the admission of Texas into the union; Massachusetts, in relation to the imprisonment of citizens of that state in other states, also in relation to the choice of electors of President and vice-president of the United States.

April 7. To the Assembly: Transmitting resolutions adopted by the Legislature of Kentucky in relation to certain amendments of the constitution of the United States.

April 7. To the Assembly:

Veto of a bill entitled "An act to provide for the public printing."

"The provision which declares that certain State officers may make contracts for the execution of the Legislative printing, at prices at least ten per cent more favorable than those now paid, and for periods not exceeding one year, not being imperative, might prove ineffectual.

The sections which authorize the principal executive and administrative officers to contract for the printing required in the several departments, prescribe no duration to such contracts; and, therefore would permit those officers to grant monopolies, and bring back ancient abuses.

Formerly, although the Printer to the State was removed by law, his official term was indefinite. The error was corrected in 1840, by limiting the term to four years. The present bill would again make the term indefinite.

The bill proposes to remove an officer whose term is only about half expired. This proceeding, is in the form of a law, and yet is, in its nature, and in the spirit of the Constitution, an executive, rather than a legislative act.[1] My agency in such a case, must conform to the general principles observed in exercising similar powers residing in the Executive Department alone, or shared by that department with the Senate. Although the Governor, or the Governor and Senate, may at pleasure, and without assigning causes, remove most of the civil officers not judicial nor elective, before the expiration of their legal terms, yet that power, instead of being arbitrarily or capriciously exercised, is only put forth when there are just complaints of official incompetency or delinquency. There is no such complaint against the Printer to the State. The confidence reposed in him has not been disappointed; and he has performed his duties, so far as I am informed, diligently, discreetly and faithfully.

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1 Const. 1821, art. 1, § 1; art. 3, § 1.

If it be necessary to revise the tariff of printing, as the bill would seem to imply, has such a proposition been made to the incumbent? Relying upon the public faith, he has necessarily invested a capital of thirty thousand dollars in procuring the materials necessary to execute the public printing; and it is apparent, that under such circumstances, he could better afford to submit to just and necessary modifications than to have so extensive a business suddenly arrested, and materials required only for the public service, left unemployed and useless. Grant that the incumbent, reposing upon his contract, would not submit to a just revision, which evidently is not known, and which my knowledge of that officer will not permit me to believe, must we then strike down a party whose interest is opposed to our own, because we have armed him with a legal defence against our demand?

If one party to a contract could upon any consideration rescind it, for his own advantage, justice and equity, nevertheless, would oblige him to indemnify the other for the injury he must sustain. Yet I find no pretense of such indemnity in the present case. The laws of morality and justice, and the principles of equity recognize no distinction between States and individuals. If we can, without indemnity to the other contracting party, abrogate or rescind, or in any manner violate one contract, we can all others. If we claim an exemption from the obligation of contracts, that claim ought to be known and avowed. Yet the bill before me presents the incongruity of abrogating a contract which is in full force, and yet directing others to be made which could be of no more sacred obligation. Of what use would be the new contracts? If we violate the contract into which we have entered with the State Printer, because it relates only to mechanical business, who can determine the point where the principle shall end? How shall we oblige the citizens of the State to perform their contracts, if the State denies her own obligations?

Decide such questions as we may, the no less grave and important inquiry yet remains: Have we the power to abrogate, to rescind, or even to violate this contract? I speak not of physical force, but of lawful, rightful power derived under the constitution, from the source of all strength, the People. All legislative power not so derived is a perversion of rightful authority, and is mere usurpation. The act passed January 13th, 1840, declares that 'Thurlow Weed is hereby appointed Printer to the State,' 'for and during the term of four years, and shall perform all the duties and render all the services enjoined or required by law.' Again the act declares that 'the Printer to the State shall hold his office for the term of four years,' and again, that 'the Secretary of State and Comptroller are hereby authorized to enter into a contract with the Printer to the State appointed by this act, for the public printing during the term of his appointment;' and that the contract thus to be made shall be reported to the Legislature. The Printer subscribed the official oath, the contract was executed and reported to the Legislature, the responsibilities of the office devolved upon him, and the office, its rights and immunities by the combined force of the law and the contract vested in him absolutely and indefeasibly, except by his own consent or default. The Constitution of the United States, adopting an immutable principle of justice, which would be of equal obligation even without that high sanction, declares that 'no State shall pass any laws impairing the obligation of contracts.'[k] The Supreme Court of the United States, in the case of Fletcher against Peck,[1] decided that when a State law was in its nature a contract, and an absolute right had vested under it, a repeal of the law was void, and could not affect those rights, nor impair the title so acquired, even although the original law was procured by fraud and cor-

[k] U. S. Const. art. 1, § 10, clause 1.

[1] 6 Cranch. 87.

ruption; that a grant from a State was as much protected by the Constitution of the United States, as a grant from one individual to another; that an executory contract was as much protected as one that was executed, and that a sovereign State was as much inhibited from impairing its own contract, or contracts to which it was a party, as from impairing the obligation of contracts between individuals. In another case, where New Jersey had declared by law, in 1758, that certain lands to be thereafter purchased for the use of Indians should not be subject to any tax; and in 1804, directed a tax to be levied on the lands which had thus been purchased, the same high tribunal declared that the act of 1758 was equivalent to an inviolable contract, and adjudged the law of 1804 a breach of that contract, and therefore void and of no effect. In the Dartmouth College case,[m] the same court declared that all incorporeal hereditaments, as immunities, offices and franchises were rights valuable in law, and whenever they were the subject of grant or contract, they were as much within the protection of the Constitution of the United States as a grant of land. In a more recent case that final authority upon all constitutional questions declared that the objections to a law on the ground of its impairing the obligations of a contract "could never depend upon the extent of the change which the law would effect;" that any deviation or any new condition, or any dispensation of a condition, however minute or immaterial its effect upon the contract, or upon any part or parcel of it, impairs its obligation.*

The principle of these decisions is that although so far as general legislation is concerned, one Legislature may rescind what another has done, yet when an act has been done under a law which is in its nature a contract, a succeeding Legislature cannot recall it. The present is in the control of the Legislature, and it may act for the future, but

[m] 4 Wheat. 518.

* See Green v. Biddle (1823) 8 Wheat. 1, 84.

the past cannot be affected, by even absolute power. In such cases the laws of the States, like those of an ancient empire, change not.

The bill before me not only proposes to deprive the Printer to the State of rights and immunities vested in him by the contract, but to remove him from the office guaranteed by a contract invested with all authority and solemnities that sovereign power can bestow. A legislative act more directly calculated to impair the obligation of that contract, than the bill before me, which would annihilate both the law and the contract, cannot be conceived. What justification then could I, who am under an obligation to support the Constitution of the United States as thus expounded, find for approving and giving effect to such a law? No answer to this question suggests itself, except that the Legislature reserved a right to repeal the law. Such a repeal it was prudently foreseen might become necessary or useful, if the Printer to the State should neglect or refuse to perform its important duties. But, inasmuch as a power reserved for such occasions might be perverted and exercised capriciously or unjustly, the Legislature thought proper at the same time to secure the incumbent by a contract to last, not during the pleasure of the Legislature or until the law should be repealed, but during the term of his appointment — a contract to which the Constitution of the United States would instantly and forever attach, and which, therefore would be beyond the reach of even legislative power. This obviously legal effect of the transaction was understood and designed by the Legislature; for when the act of 1840 was under consideration in the Assembly, a motion to amend the same by an additional provision in these words, 'the legislature may at any time alter, modify or repeal this act, the effect of such repeal shall be construed so as to put an end to any contract made under the same,' was lost by a vote of 55 to 69. So also in the Senate a motion was made to amend the

section containing the reservation of repeal, by adding the words "and modify or rescind any contract entered into under the same upon such terms as shall be just and equitable," and was rejected, eight members voting for and eighteen against the same.

Such, also, would seem to be the sense of the present Legislature; for the bill before me avoids alluding in any way to the contract; from which I infer, that whatever may be done with the law of 1840, the contract is understood to be within the custody of the Constitution, and beyond the reach of the Legislature. It could not be doubted that if the bill explicitly declared that the contract was thereby abrogated, it would be a palpable and impotent attempt to infringe the Constitution of the United States. But the effect of the bill is the same without such a declaration, for the Legislature cannot do indirectly what it could not openly and avowedly accomplish.

I am well aware that if the bill should become a law, the public officers might suffer it to have effect, because the Legislature of this State has not provided, and the Congress of the United States is by an amendment of the Constitution prohibited from giving to the injured party an appeal to the courts of justice.[n] But that consideration, so far from being an argument for committing the wrong, is the most conclusive reason against it.

The specious argument thus noticed, did not escape the consideration of Chief Justice Marshall, who well observed, that 'The constitution of the United States as adopted, gave the federal courts jurisdiction in suits brought by individuals against States.[o] A state which violated its own contract was then suable in the courts of the United States for that violation. Would it have been a defence in such a suit to say that the State had passed a law absolving itself from the contract? It is scarcely to be conceived that such a defence could be set up — and

[n] See U. S. Const. 11th Am.

[o] U. S. Const. art. 3, § 2, clause 1.

yet, if a State is neither restrained by the general principles of our political institutions, nor by the words of the Constitution, from infringing the obligation of its own contract, such a defence would be valid. This feature is no longer found in the Constitution; but it aids in the construction of those with which it was originally associated.'

What then is my authority for interposing objections to a bill impairing the obligation of a contract? I find it thus expressed in an adjudication pronounced by the same learned and honest jurist:

'Whatever respect might have been felt for the State sovereignties, it is not to be disguised that the framers of the Constitution viewed, with some apprehensions, the violent acts which might grow out of the feelings of the moment; and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions on the legislative power of the States are obviously founded in this sentiment; and the Constitution of the United States contains what may be deemed a bill of rights for the people of each State.'

Some of our constitutional rights as citizens are protected by the courts of justice. But it is when such rights are invaded by the State, and she at the same time closes her courts of justice against us, that the obligations of the law making power are doubly imperative, and that we feel and know the value and importance of the oath which binds that power to the Constitution.

In applying a constitutional restriction in the present case, I cannot permit even an apprehension of error to intrude, since there could be danger only in approving the bill, while it can never be otherwise than safe to be just and forbearing in the exercise of power, to abide by the laws and contracts of the State, and preserve her faith from dishonor and reproach."

The bill was not passed over the veto.

April 8. To the Senate: Suggesting a verbal amendment to a bill presented to him relative to the Village of Fort Plain. The amendment was immediately agreed to by both houses, and the bill which became chapter 147, was approved by the Governor on the same day.

April 9. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *April* 9, 1842.

"I have heretofore made known to the Legislature that the States of Virginia and South Carolina have adopted retaliatory acts, which will go into effect on the first of May next, and which are calculated to embarrass the commerce of this State, and that those proceedings were grounded in part on the supposed necessity of counteracting a law of this State passed May 13, 1840, extending the trial by jury. Since such communications were made, the Supreme Court of the United States has made an adjudication which has been supposed to draw in question the constitutionality of that act. Supposing that it would be important to the Legislature to possess correct information on this subject, I have spared no efforts to obtain authentic evidence of the decision.

I have now the honor to lay before the Legislature a communication which has just been received from the reporter of the Supreme Court of the United States, showing with tolerable clearness the points involved in the adjudication, from which it may be inferred that the aforesaid act would be held by that tribunal to be an infringement of the Constitution of the United States.[p] Nevertheless, the retaliatory acts of our sister States are none the less unconstitutional or oppressive, whatever may be the merits of the laws of this State. Nor do the conditions contained in those acts provide for their suspension, even although the law of this State were held void or repealed. It seems

[p] Prigg v. Pennsylvania, 16 Peters 539.

proper, therefore, to inform the Legislature that if my present opinions shall remain unchanged, I shall deem it my duty to give notice to any citizens of this State who may be molested in the States of Virginia and South Carolina in consequence of those laws, that they will be expected to take all legal measures for their defence, and to appeal to the courts of the United States, relying upon the faith of this State for their indemnity; and I hope such a course of proceeding may meet the favorable consideration of the Legislature. [See note 5.]

WILLIAM H. SEWARD."

April 11. To the Assembly: "A message from the Governor in relation to certain lands upon which the government of the United States is erecting public works." [See note 13.]

The records do not contain the message.

April 11. To the Assembly: Suggesting an amendment adding a new section to the bill relating to the sale of real estate to pay assessments. The amendment was adopted, and the bill was approved the same day, becoming chapter 154.

April 11. To the Assembly: Suggesting an amendment to a bill relating to the village of Black Rock. The amendment was adopted, and the bill approved the same day, becoming chapter 211.

April 11. To the Assembly: Suggesting amendments to a bill relating to the city of Albany. The amendments were adopted, and the bill was approved the 12th, becoming chapter 275.

April 12. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April* 12, 1842.

"I received last evening a preamble and resolution, in which the Legislature, after reciting my refusal to sur-

render Peter Johnson, Edward Smith and Isaac Gansey as fugitives from justice, and further reciting that I had assigned as the reason for that refusal, that stealing a slave within the jurisdiction and against the laws of Virginia was not a crime within the meaning of that part of the Constitution of the United States which relates to the demand and surrender of fugitives from justice,[q] has expressed an opinion adverse to the construction of that instrument which I had thus adopted. The subject to which the resolution refers is one exclusively of executive responsibility, the duties of this department in regard to the demand and surrender of fugitives from justice being prescribed not by the Constitution or any laws of this State, but by the Constitution and laws of the United States; nevertheless, it is not only the right but it has always seemed to me to be proper for the Legislature to express its opinion upon the subject by way of advice, and such an expression is more proper when the adherence of this department to its decision, has, with other causes, resulted in unconstitutional aggression and retaliatory acts by Virginia and South Carolina.

Grateful therefore to the Legislature for the advice which has thus been received, I have considered it with the most respectful deference to their wisdom, and with an anxious desire for harmony and agreement upon a question in which the rights, interests and honor of this State are deeply involved. After thus considering the subject, without the benefit however of any of the arguments which have brought the Legislature to a different conclusion, I remain of the opinion that a being possessed of the physical, moral and intellectual faculties common to the human race, cannot by the force of any Constitution or laws, be goods or chattels or a thing; and that nothing but goods, chattels and things can be the subject of larceny, stealing or theft; and that the Constitution of the United States so

[q] U. S. Const. art. 4, § 2, clause 2.

far from controverting truths which seem to me so obvious, acknowledges them by carefully treating persons held in involuntary servitude or bondage not as property, but as men, while the Declaration of Independence expounding what to any mind may seem obscure in the Constitution, declares that 'all men are born free and equal, and have the inalienable right to enjoy life and liberty and to pursue the way to human happiness.' In view of the crisis at which our relations with other States have arrived, and of the close of the legislative session, it seems my duty to make no delay in submitting these views to the Legislature.

I am requested by that body to communicate its preamble and resolutions to the Executive of Virginia. The Constitution of this State declares that it shall be the duty of the Governor to expedite all measures which shall be resolved upon by the Legislature, and to take care that the laws are faithfully executed.[r] But the Legislature cannot effectually resolve upon any measure or impose a duty on the Executive except by bills passed by both houses and becoming laws by the Executive approval or by a Constitutional majority notwithstanding his objections. In proper cases I cheerfully comply with the requests of the Senate and Assembly, but I cannot do so when the request conflicts with constitutional duties. I could not transmit the resolution in the present case without silently acquiescing therein and thus waiving a decision to which I adhere, or accompanying the communication to Virginia with a protest of my dissent. The former course would be a plain palpable dereliction of constitutional duty; the proceeding, if the latter alternative were adopted, would not tend to enhance the respect in which this State is held by her sister States and by the civilized world.

Cherished principles of civil liberty forbid me equally from recognizing such a natural inequality of men as the

[r] Const. 1821, art. 3, § 4.

resolution of the Legislature seems to me to assume, and from contributing in any way to perpetuate the inequalities of political condition, from which results a large portion of the evils of human life.

The Senate and Assembly will therefore excuse me from assuming the duty which an assent to their request would impose, and will, if it be proper, select some other organ of communication with the Executive and authorities of our sister Commonwealth.

WILLIAM H. SEWARD."

April 12. To the Assembly: Return of a bill without action.

"The bill entitled 'An act to provide for the collection of taxes in certain cases,' which has been received in the closing hour of the session, seems not to contain all the necessary safeguards against abuse of its provisions. Unable to examine it with care, I do not think it prudent to approve the same, or return it with objections."

The Legislature adjourned the same day, and took no further action on this bill.

April 12. To the Assembly: Return of a bill without action.

"I have received among many other bills, in the very closing hour of the session, a very voluminous bill, entitled 'An act for the licensing and government of the pilots of the port of New York, by way of Sandy Hook.'

The lateness of the time at which the bill was received, will not permit me to examine its provisions with care, and to compare them with the existing laws of this State and those of the United States. Upon such a hasty examination as it has been in my power to bestow, the bill seems to me calculated unnecessarily to divest the House of Refuge, one of our most beneficent and useful institutions, of three thousand dollars — to create a monopoly injurious to commerce, and likely to corrupt the persons in whom the

control of pilots of the port of New York is proposed to be vested; and finally, to bring this State into conflict with the laws of Congress.

Nevertheless, I cannot at this moment say that these objections are well taken, or that they are all the objections to which the bill is open. Under these circumstances, I cannot properly either approve the bill, or return it with objections."

The Legislature adjourned the same day, and took no further action on this bill.

April 12. The Legislature adjourned until the 16th of August.

AUGUST 16. 1842.

SECOND MEETING.

The Legislature met pursuant to adjournment, and the Governor sent to both Houses the following

MESSAGE.

FELLOW CITIZENS OF THE SENATE AND ASSEMBLY.—I transmit a law of Congress which reduces the House of Representatives to two hundred and twenty-three members, and the number of representatives from this State to thirty-four. Regret for the reduction of the ratio of representation will be relieved by the more perfect expression of the popular voice which will be obtained by elections in uniform single districts. [See note 9.]

I tender you congratulations on the general prevalence of health and the abundant harvests of the year.

The edifice of the Genesee Wesleyan Seminary at Lima, a flourishing institution which has been favored with aid from the treasury, has been destroyed by fire, but private liberality, encouraged by forbearance on the part of the

State, promises a speedy renewal of the usefulness of the institution.

The administration of justice has become more efficient; but I hope the importance of preventing abuses of the writ of *habeas corpus* and of the privilege of bail may not be overlooked, as well as the manifest necessity for more effectually securing the attendance of grand and petit jurors in courts having jurisdiction in criminal cases.

The discipline in the State prisons now blends kindness and religious instruction with regular but not oppressive labor, and is producing results propitious to morality and consoling to virtuous sympathy; but I deeply regret the failure of all my efforts to induce the Legislature to prevent the growth of crime by reform in the construction of houses of detention and correction, and in the government of such institutions.

An agent has been appointed to explore the mineral districts and inquire into the expediency of substituting labor in mines for the present mode of employing convicts.

A recent election in the city of New York was attended by a turbulent outbreak, in which officers engaged in canvassing votes were compelled to leave the ballot boxes, and the outrage was followed by an attack upon a Christian church and the dwelling of its ministers. The interruption of the canvass resulted in a suspension of the functions of the common council during nearly two months. The principle of universal suffrage was nevertheless vindicated by the tranquillity with which the people awaited and obeyed decisions on the questions in issue by the judicial tribunals.

A spacious aqueduct has been constructed, by which the Croton river, having been raised to the height of one hundred and sixty-six feet above tide, is diverted from its natural channel in Westchester county, conveyed nearly forty miles over formidable inequalities of surface, and across the Harlem River, and discharged into capacious reser-

voirs, from which the waters are dispensed throughout the city of New York. This new and successful achievement in the march of internal improvement, provides the metropolis with an element indispensable to wealth, comfort and security, exceeding in volume the supply of the city of London, and fully anticipates the wants of the vast population which must eventually be concentrated in our commercial capital. The cost of the work exceeds twelve millions of dollars, and I deem it a subject of just pride, that the credit of a mere municipality has proved adequate to an enterprise which in any other age could have been attempted only by the strong arm of an imperial or despotic government. The structures, not less enduring than useful, will remain a perpetual monument, not only of the forecast and public spirit of the municipal council, but also of the advanced state of science in our country.

The remainder of the journals of the Revolutionary Legislature and Convention, containing the correspondence of those bodies with Congress, with other States, with citizens in arms and in the public councils, and with friends of liberty in America and Europe, has been printed, and will vindicate the memories of our ancestors from contemporaneous suspicions of disloyalty to their country, and enhance our already high veneration by making us more fully acquainted with their trials and virtues.

Aided by the liberal interposition of the President of the United States and the efficient assistance of the American Ministers in London and Paris, our agent has obtained access to the public archives in those capitals; and the documents which he is transcribing, together with those he has procured in Holland, will furnish complete transatlantic annals of the colony of New York from its foundation until its independence. We were before indebted to the government of Great Britain for very munificent contributions to our library. I ask your permission to mark our appreciation of the high national courtesies we have received from

European states, by transmitting to them copies of the forthcoming reports on the natural history of our commonwealth. [See note 3.]

I have great pleasure in informing you that the publication of those reports is in such rapid progress that portions will be submitted at the present session. A suite of the specimens which have been collected has been partially arranged in the Geological Museum, and the seven other collections intended for the seminaries of learning will soon be ready for their destination. The enterprise thus consummated, originated in a merely economical desire to explore our mountains in search of coal. All that has been gained in that view, is, a certain knowledge that this important mineral does not exist within our borders, and that its ample supply can only be introduced by improving and extending the channels of our trade with other communities. But the absence of coal is bountifully compensated by saline springs, and rich accumulations of lime, gypsum, marble and hydraulic cement in the Silurian formations; by marl and peat in the quaternary regions; by plumbago; and also by deposits of iron, lead, zinc and copper in the granite districts, in the vicinity of almost inexhaustible forests furnishing the fuel indispensable for the reduction of these minerals. Our lyceums, moreover, will be enriched with specimens of all the animals and plants, and every soil, rock, mineral and fossil as yet discovered within our territory. The field within which medicinal science, agricultural chemistry, mineralogy and economical geology have hitherto pursued their beneficent investigations, is thus broadly enlarged; and such are the regularity of our rock strata and their exposure, and such the variety and perfection of organic remains, that the survey, although its results are as yet but partially disclosed, is regarded in the European schools as affording a contribution of great value to the cause of science, with data for a more philosophical classification of facts and important guidance in reading

the unerring and imperishable records in which nature has written her own annals on the globe we inhabit.

I call your attention to some cases in which the law of Virginia, retaliating on peaceful citizens of New York injuries supposed to have been committed by her executive and legislative authorities, has been put in operation. Although our commerce is not greatly embarrassed by these unfraternal proceedings, yet unoffending citizens ought not in such cases to be left to incur inconvenience, or suffer loss. I therefore renew my request for authority to instruct them to test the validity of the law of Virginia in the legal tribunals. [See note 5.]

The terms in which the Supreme Court of the United States assigned reasons for their judgment, in a recent case between Maryland and Pennsylvania,[a] would invalidate every state law concerning fugitives from justice, which should fail to facilitate the capture, even without legal process, of persons claimed as slaves, whether they had ever been subjected to servitude or not; but the authority of the decision cannot be extended to cases presenting facts materially varying from those which marked the case thus adjudicated. It is, therefore, believed that the privileges of *habeas corpus,* and the right of trial by jury, as yet remain unimpaired in this State; and we are not obliged to retrace what is justly regarded as an important advance towards that complete political and legal equality which, being conformable to divine laws and essential to the best interests of mankind, will ultimately constitute the perfection of our republican institutions.

Rhode Island has been made a theatre of resistance to public authority, growing out of unwise delays in establishing equality of suffrage. A person assuming the character of chief magistrate of that state, transmitted to me a resolution passed by assemblages which claimed to be a legislature, announcing to the executive and legislative

[a] The Governor apparently referred to Prigg v. Pennsylvania, 16 Peters 539.

authorities of this state the organization of a new government in that commonwealth, under a constitution approved by a portion of the people in an election held and conducted without previous legislative authority. Almost simultaneously, the governor, in conformity with constitutional laws of the United States, gave me notice that the individual who had thus assumed executive functions had taken refuge in the city of New York, and required me to arrest him as a fugitive, charged with the crime of treason, committed in an attempt to subvert the government of Rhode Island by military force. I complied with the requirement, by issuing process, but the offender was not found within our jurisdiction. I also adopted proper measures to prevent the arms and military stores in our arsenal near the sea board, from being used in the attempt to desolate with civil war the bosom of a sister State. The people of Rhode Island nobly sustained their government, without the aid they had a right to expect from the federal executive; and measures have since been adopted by their Legislature, designed to allay public discontent and satisfy just claims for an enlargement of suffrage.

The long delayed negotiations between the United States and Great Britain are supposed to be on the eve of completion by a treaty in which our northern boundary will be readjusted so as to secure to this state an accession of territory on the shore of Lake Champlain important to its defence against future aggression, and controversies which have endangered the peace of the two nations, will be permanently settled on principles consistent with the national honor.

I have forborne to demand fugitives from justice who have fled to the British Provinces, and also to surrender criminals from those Provinces who have taken refuge in this State, and from the time when the Supreme Court of the United States* virtually decided that the powers necessary for those purposes were exclusively national, and

* See Holmes v. Jenison (1840), 14 Pet. 540; also *Ex parte* Holmes (1840), 12 Vt. 631.

therefore belonged to the Federal Government. The Governor General of British North America however, surrendered fugitives upon my informal request, until instructions very recently received from the royal government, have obliged him to discontinue such courtesies. The evils resulting from the facility with which offenders against the laws of either country may secure impunity for their crimes, are so great, that I have thought proper to invoke the constitutional interposition of the General Government, in the hope that the subject might find a place among the matters in negotiation between the two nations.

I have also considered it due to the cause of humanity, to address the Chief Magistrate of the Union in behalf of unfortunate citizens of this State suffering the penalties of exile and imprisonment in an island of the Pacific ocean, for political offences committed under the influence of natural but misguided sympathies for the inhabitants of the British Provinces on our borders.

Immigration was, during the last year, checked by alarms of war, but an increased tide is now settling into the country. Our thoroughfares are enlivened with families; and even small communities from the British Islands and Continental Europe, with their property, their teachers, and their pastors, are seeking homes among us, and a participation in our social and political enjoyments. Viewing this as an important and rapidly increasing element of national strength and greatness, and regarding all prejudices against any portion of the common family of mankind on account of the accidents of birth, laws, language or religion, as unwise and deeply injurious, I renew my recommendation heretofore made for removing the disabilities by which resident aliens are embarrassed in acquiring, holding and transmitting real estate.

I regret to inform you that the tolls received on all the canals during the present political year, compared with the amount collected during a similar portion of the last

year, exhibit a diminution of one hundred and seventy-seven thousand six hundred and ninety-seven dollars; that the amount of duties received from auction sales is less by seven thousand one hundred and forty-one dollars, than the sum received during the corresponding portion of the preceding year; and the revenue from duties on the manufacture of salt, exhibits a similar diminution of eight thousand eight hundred and ninety-three dollars. The aggregate decrease of the revenues from these several sources thus far, is one hundred and ninety-three thousand seven hundred and thirty-one dollars. The diminution in the canal revenues has been mainly experienced in the tolls on merchandise passing from tide water into the interior. It is probable, however, that the descending business in transporting to market the large agricultural surplus, furnished by the abundant harvests, will go far towards supplying the deficiency.

I submit a communication from the superintendent, showing that the manufacture of salt, seriously embarrassed by the present ruinous revenue system of the United States, cooperating with the commercial pressure, must probably be altogether relinquished before the expiration of the year, and I not only invoke your direct action, but solicit your influence with Congress to avert a disaster which would increase the embarrassments of the treasury and be deeply injurious to a large and important portion of the community. Our salines have hitherto constituted an essential element of our fiscal strength, and have always been regarded as among the most valuable and permanent possessions of the State. The possible sacrifice, therefore, by the general government, of so important an interest cannot but excite anxiety and alarm.

An agent was appointed to receive the portion of the proceeds of the sales of the public lands, which by a law of Congress, was payable to this State on the first of July last, and proceeded to Washington for that purpose, but was in-

formed at the treasury that the apportionment had not been completed, and the money has not yet been received. The real importance of this revenue is not at all affected by the amount which it yields at this time, since the national domain remains undiminished except by sales. Whether the stream of revenue be temporarily obstructed, as at present, or flow onward with a strong and increasing current, as at more prosperous periods, its ultimate benefits must be substantially the same.

This State having long and uniformly expressed opinions in favor of protecting national industry, by an adequate tariff, it must be an occasion of general regret that the President perseveringly opposes and defeats the passage of laws designed to accomplish that object. And our regret is mingled with surprise, when we consider that it is at least doubtful whether there is any legal authority for the imposts now levied. The President, moreover, unequivocally indicates a determination to defeat any tariff law which can be passed, except it be accompanied by a relinquishment by Congress of the right to protect agricultural and manufacturing industry otherwise than incidentally, and also by a diversion from the States of the revenues arising from the public domain. The right to adjust the pecuniary burthens imposed by the government upon its citizens would seem, of all others, to belong properly to the Legislature. It cannot for a moment be supposed that the founders of the Constitution intended that the Executive should dictate to the National Congress, laws regulating revenue and finance.

The fourth day of July last completed a quarter of a century since the system of internal improvements was undertaken by this State. Within that period, artificial navigation has been opened throughout distances equal to eight hundred and three miles; and the use of animal power in transportation has given place to the steam engine, on routes seven hundred and fifty-seven miles in length. Navi-

gation has been established from tide water to Lake Champlain, Lake Oneida, Lake Ontario, Cayuga lake, Seneca lake, Crooked lake and Lake Erie, and to the Mohawk and the Oswego, to the Seneca and the Genesee, the St. Lawrence, the Delaware and the Susquehannah rivers. Not only has our frontier trade, which sought distant markets, been incalculably increased, and concentrated at the city of New York, but the shores of Lake Huron, Lake Michigan and Lake Superior, and the banks of the Ohio, the Miami and the Wabash have been reached by our vessels, and the once inconsiderable traffic of that vast central region, which stretches from the summit of the Alleghanies to the banks of the Mississippi, has grown into an immense trade and become largely tributary to the same fortunate metropolis. Meanwhile our canals and railroads have been connected with similar systems, a thousand miles in length, in the Eastern States, and with still more extended artificial channels in the communities beyond our southern borders. Our revenues have been increased from $419,900 in 1817, to $1,952,000 in 1841; our school and literature funds have been doubled; the remote districts of the State have become the homes of an intelligent and industrious population; four flourishing cities and upwards of an hundred incorporated villages have been called into existence; our commercial emporium has trebled in population and added one hundred and seventy millions to its wealth; the revenues, commerce and physical strength of the whole Commonwealth have been augmented in almost an equal proportion; and the States are bound together with bands stronger than those of merely political compact, and the danger of dismemberment is happily averted. Of the system which, though yet incomplete, has produced these wonderful results, New York was the projector; and she may point to it as a column, designed and shaped by herself, to strengthen and perpetuate the national structure.

But this high career of prosperous and well directed en-

terprise has been brought to a sudden and humiliating close. For the first time in the quarter of a century which has elapsed since the ground was broken for the Erie canal, a Governor of the State of New York, in meeting the Legislature, finds himself unable to announce the continued progress of improvement. The officers charged with the care of the public works, have arrested all proceedings in the enlargement of the Erie Canal, and the construction of the auxiliary works. The New York and Erie railroad, with the exception of forty-six miles from the eastern termination, lies in unfinished fragments throughout the long line of southern counties, stretching for four hundred miles, from the Walkill to Lake Erie. The Genesee Valley canal, excepting the portion between Dansville and Rochester, also lies in a state of hopeless abandonment. The Black River canal, which was more than two-thirds completed during the last year, has been left wholly unavailable. As if this were not enough, two railroads, towards the construction of which the State had contributed half a million of dollars, and public spirited citizens large sums in addition, have been brought to a forced sale and sacrificed at an almost total loss to the treasury, without yielding any indemnity to the stockholders, and without even securing a guaranty that the people should be permitted to enjoy the use of the improvements. At the same time the jealousies, alike unjust and unwise, which have so long delayed the construction of the New York and Erie railroad, are fostered with expectations authorized by official announcement of a similar sacrifice of that work as soon as the sale can be compelled by law,—a sacrifice which must result in a loss to the treasury of three millions of dollars, and to beneficent contributors of nearly two millions, in addition, and a final overthrow of all the long cherished and highly excited hopes depending on the accomplishment of that enterprise. [See note 17.]

The painful emotions excited by the condition to which

the public works are thus reduced, might be somewhat relieved, if there were any well grounded hope that their prosecution would be resumed within any reasonable period. But the provisions of the law suspending those works, as well as the contemporaneous expositions of the grounds on which it was enacted, with every rational view which can be taken of its tendency, forbid any such expectation. The policy of the act plainly is that the debt of the State shall in no event be increased for the prosecution of improvements; nay further, that the whole of the existing debts shall be extinguished before any additional sum be borrowed, and that the accruing revenues, instead of being appropriated, as heretofore, to the prosecution of the works, be henceforth applied exclusively to the establishment of a fund for the extinguishment of the existing debts, although with small exceptions those debts are redeemable only at distant periods. It is but too apparent that these provisions render any further progress in our public works wholly impracticable. The present generation, if this law continue, must abandon all hopes of seeing the system resumed, and it will only remain for them to pay the whole cost of works, in a great degree useless, because left unfinished, and hastening rapidly to dilapidation and ruin. [See note 16.]

The objects which the Legislature had in view, in directing the suspension of the public works, were declared to be to pay the debts of the State and preserve its credit. The means of paying the debts are derived from revenues and taxes. But the State, so far from diminishing, has increased its indebtedness, by becoming liable to contractors for heavy damages which might have been avoided by prosecuting the works, while by discontinuing the necessary enlargement of the Erie canal, the increase of revenues hitherto so constant, and so confidently relied upon for the reimbursement of the debts, is checked, and must ultimately cease. Simultaneously with the commencement of this

policy, a new mode of stating the public accounts was adopted. Debts due from the State to itself, and debts for the payment of which funds had been invested and set apart, were added to the aggregate of debts for which no provision had been made; the conditional guaranty of the credit of the New York and Erie railroad company was converted into a fixed debt, by withholding the aid necessary to complete their road and render it productive; and other similar guaranties in regard to which there had been no default, nor indications of default, by the principals first liable, were made to swell the aggregate indebtedness with which it was represented that the treasury was oppressed. The principle that our improvements were to be made exclusively on the credit of their revenues, and without burthening the people, was abandoned by levying a tax exceeding six hundred thousand dollars, bearing alike on the districts the least, as well as those the most benefited by the construction of the works. Nor has the expectation of restoring the stocks of the State to their former high valuation been adequately realized, and certainly not to any extent commensurate with the sacrifices which have been made. The fiscal officers of the State are not now able to negotiate loans even at seven per cent, except occasionally for small amounts. Under these circumstances the inquiry arises whether the policy thus attempted ought to be continued. An imperative sense of duty compels me again to declare my conviction that it is radically wrong, and that erroneous views have been taken of the causes of our embarrassment.

Previously to the present session of Congress, when as yet only one State had omitted to pay the interest on its debt, and that, too, not without a pretext that betrayed a desire to avert the consequences of so great an error, I called the attention of the federal government to alarming indications of a general failure by the indebted States, and invoked the constitutional efforts which that government

might effectually make to avert such a catastrophe. Afterwards, when the Legislature of this State assembled at the beginning of the present year, the same apprehensions were communicated to them, with a view of the deep interest which we had at stake in the maintenance of the credit of our sister States. I urged that their failure would produce effects disastrous to the national industry and enterprise, and that it would necessarily result in diminishing the revenues from our canals and all other sources. I submitted, also, that although we had ample resources and revenues, our credit must unavoidably receive some injury from our intimate political connection with insolvent States, and that if it should become materially impaired, serious embarrassment would be experienced in prosecuting the public works. Adverting to erroneous opinions then somewhat prevalent, I showed that the revenues from the canals, steadily increasing at the rate of fifteen per cent every two years, notwithstanding temporary fluctuations, together with the revenues from the public domain, constituted ample resources for borrowing all the money necessary to complete the works, and for paying the interest on the then existing debts, and those which it would be necessary to contract, and for extinguishing the principal as fast as it would become due. I demonstrated that the danger to which the credit of the State was exposed, arose, not from any cause merely local or temporary, nor at all from the extent of our unfinished works, nor from the amount of our indebtedness, nor from the firmness with which we had persevered in our improvements during the three previous years, but from the failure of the confidence of foreign capitalists, and even of the American people themselves, in the financial wisdom and integrity of the governments of other States.

I submitted as a course proper in the emergency, that care should be taken to foster our own credit by stating justly, and without exaggeration. the actual indebtedness of

the State; by husbanding our revenues; by preventing our conditional guaranties from becoming fixed debts; by scrupulously performing our engagements with contractors; by prosecuting the unfinished works firmly, and even with sacrifices, if necessary; always adhering, however, to the fundamental condition that no more money should be borrowed in any one year than a sum, the interest of which could be paid with the current revenues, to be ascertained from the actual receipts of the preceding year; and by constituting a sinking fund with the moneys annually received from the proceeds of the national domain, together with a sufficient portion of the surplus revenues, which should be inviolably pledged, and steadily applied to the constant diminution and final extinguishment of the principal of our debt.

And to these suggestions, relating to the direct action of the Legislature, I added others, earnestly recommending that the influence of this State should be exerted to secure the adoption of national measures which the exigency rendered necessary. Prominent among those measures were tariff laws, the restoration of the currency, and some mode of enabling the indebted States to render their portions of the proceeds of the public lands immediately available for the payment of their pressing engagements. And I also urged that the false and fatal principle of repudiating public debts, which as yet had not been openly promulgated, should be met by this State with such an expression of disapprobation and rebuke, as would convince the world that come what might of trial or disaster, so far as our action and influence could be effectual, the faith of not only this, but of all the States of the American Union, should be preserved forever inviolable.

The policy thus recommended did not prevail, and the evils then apprehended are fully realized. State after State, some with unavailing struggles, but others without any, have neglected to perform their fiscal engagements, and thus a dark stain is diffusing itself over the escutcheon

of our country. The credit even of the Union is virtually destroyed, and our own is impaired, notwithstanding our great resources and the convulsive efforts which have been made to induce a discrimination between that credit and the broken faith of other States.

Under these circumstances, I must adhere to the views before submitted, and invite their reconsideration; and to avoid any misapprehension, I recommend that the Legislature rescind the law directing the discontinuance of the public works; render to the New York and Erie Railroad Company the aid necessary to enable them to recover their credit and resume their operations; and direct the fiscal officers of the State, instead of reserving surplus revenues from the canals for the payment of debts due at distant periods, to apply such revenues, with the proceeds from the national domain, to the prosecution of the public works, upon the plan before submitted, until the works shall be completed and become productive; and to provide other and additional temporary means, if necessary, for that important object. And I further recommend that the Legislature urge upon Congress, and especially upon the President, the necessity of tariff laws adequate to revive our industry and commerce and restore the credit of the General Government; of a sound currency upon a specie basis and of uniform value throughout the Union; and above all, of such measures as shall secure to the several States not only their distributive shares of the public lands, but such further constitutional aid based upon those lands, as will enable them promptly to recover their credit.

It cannot be denied that the time which has elapsed and the policy which has been pursued, have increased the difficulties to be overcome and yet with proper effort the ground we may have lost may be recovered. We are oppressed, not so much by opposing forces as by our own irresolution, and a small portion of that energy which was put forth when our system of improvement was under-

taken, would secure its reestablishment and successful triumph. It was not then thought unbecoming for the State to invoke the cooperation of the Union and of the several States in aid of our efforts, and surely it cannot be deemed discourteous now to urge upon them the adoption of measures which will enable them to perform their own obligations, the neglect of which has involved, however unjustly, the whole country in a common calamity.

Whatever may be the decision of the Legislature on these momentous questions, it is at all events desirable to mitigate, as far as may be, the misfortunes in which the community is involved, and above all to abstain from any measure which would aggravate existing evils. I do therefore most earnestly protest against any further sacrifices of works already completed, or in progress of construction, as being alike wanting in magnanimity and wisdom; and while I ask for the New York and Erie railroad no preference over the works in which the State is directly engaged, or over those of similar character in other localities, yet in view of the imminent jeopardy in which that great enterprise is now placed, I recommend that the proceedings for its sale be discontinued; and whatever else may be omitted, I again urge that adequate measures be adopted to secure the immediate resumption and speedy completion of that work, which, under better auspices, would add dignity and luster to the character of the republic. I also earnestly recommend that instructions be given to the Canal Commissioners, requiring them to complete and put in operation without further delay, at least the nearly finished portions of the enlarged Erie canal.

The people, however, look not for temporary or partial relief, but for the reestablishment of the system of internal improvement upon broad and impregnable foundations. Our fellow-citizens urge us to resume the public works, by pleading the distress which their suspension has already produced. They point us to labor unemployed, and masses

impoverished; to agriculture unrewarded and burthened; to trade diminished and discouraged; to credit paralyzed; to land and property depreciated and passing from hands hardened with the labor of production, into others that wait to gather the ripened fruits of industry; to disappointed expectations built on the public faith, which no damages can reach or compensate; to dilapidated structures with increasing expenditures; to diminished revenues and protracted taxation; to increasing and hopeless embarrassment and decaying enterprise; and to a long and cheerless decline from a career in which so much has been won for the interests and honor of the State.

But we need no such painful incentives. Progressive physical improvement, comprehending the north as well as the south, the east and the west, opening every necessary channel, and disclosing every resource which nature has bestowed, is emphatically the policy of the State. And we are required to return to the course we have left, by every consideration of duty to ourselves, to posterity, to our country, and to mankind.

In closing this, my last general communication to the Legislature, it would evince singular insensibility not to anticipate my retirement from the trust which I have received from my fellow citizens. Far from indulging a belief that errors have not occurred in conducting the civil administration of a State embracing such great and various interests, I am, nevertheless, solaced by the reflection, that no motive has ever influenced me inconsistent with the highest regard for the interests and honor of the State, and with the equality justly due to all its citizens. It may be, that in seeking to perfect the diffusion of knowledge, or in desiring to raise from degredation or wretchedness less favored classes, unjustly depressed by the operation of unequal laws or adventitious circumstances; or, in aiming to carry into remote and sequestered regions, the physical and commercial advantages already afforded to more fortunate and prosperous districts, I have urged too

earnestly, what seemed to me the claims of humanity, justice and equity; yet, remembering the generous appreciation which those efforts have met, I shall carry with me into retirement, a profound sense of obligation, and a spirit of enduring gratitude. I shall never cease to invoke in behalf of the people of this State, a continuance of the invaluable privileges, civil and religious, which they now enjoy, and to implore that Great and Beneficent Being who directs and regulates the destinies of Nations, to promote and watch over this Commonwealth, in its continual advancement throughout all succeeding ages.

WILLIAM H. SEWARD.

Albany, August 16, 1842.

SPECIAL MESSAGES.

August 25. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *August* 25, 1842.

"Impressed with a sense of the distinguished courtesy manifested towards the people of this State by the Government of the Netherlands in regard to the application for an admission of our Historical Agent to examine the archives of that country, I transmitted to His Majesty on the 2d of May last, a series of the Annual Reports of the Regents of the University, as a mark of the respect towards him cherished by the citizens of this State, and their affectionate esteem for a people with whom we were once so intimately connected. I have now the pleasure to communicate to the Legislature the correspondence on that occasion.

WILLIAM H. SEWARD."

September 2. To the Assembly: Transmitting resolutions adopted by the Legislature of Mississippi favoring the annexation of Texas.

September 7. The Legislature adjourned without day.

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